

IN THE CIRCUIT COURT OF CARROLL COUNTY, ARKANSAS
CIVIL DIVISION
____ DIVISION

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CIRCUIT COURT
CARROLL COUNTY, ARKANSAS
EASTERN DISTRICT

OSAGE CREEK CULTIVATION, LLC;
DELTA MEDICAL CANNABIS COMPANY, LLC;
BOLD TEAM, LLC; NATURAL STATE MEDICINALS
CULTIVATION, LLC; AND NATURAL STATE WELLNESS
ENTERPRISES, LLC

PLAINTIFFS

v.

CASE NO. CV 2020-88 ED

ARKANSAS DEPARTMENT
OF FINANCE AND ADMINISTRATION;
ARKANSAS ALCOHOLIC BEVERAGE
CONTROL DIVISION; ARKANSAS
MEDICAL MARIJUANA COMMISSION;
CARPENTER FARMS MEDICAL GROUP, LLC;
RIVER VALLEY RELIEF CULTIVATION, LLC;
NEW DAY CULTIVATION, LLC

DEFENDANTS

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT AND FOR
PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF**

COME NOW the Plaintiffs, Osage Creek Cultivation, LLC, Delta Medical Cannabis Company, LLC, Bold Team, LLC, Natural State Medicinals Cultivation, LLC, and Natural State Wellness Enterprises, LLC (collectively referred to herein as "Plaintiffs"), by and through their attorneys, Murphy, Thompson, Arnold, Skinner & Castleberry and Fuqua Campbell, P.A., and for their Complaint against Arkansas Department of Finance and Administration, Arkansas Alcoholic Beverage Control Division, Arkansas Medical Marijuana Commission, Carpenter Farms Medical Group, LLC, River Valley Relief Cultivation, LLC, and New Day Cultivation, LLC (collectively referred to herein as "Defendants"), do state and allege as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Osage Creek Cultivation, LLC (“Osage”) is an Arkansas limited liability company with its principal place of business located in Berryville, Carroll County, Arkansas. Osage is a licensed medical marijuana cultivator.

2. Plaintiff Delta Medical Cannabis Company, LLC (“Delta Medical”) is an Arkansas limited liability company with its principal place of business located in Newport, Jackson County, Arkansas. Delta Medical is a licensed medical marijuana cultivator.

3. Plaintiff Bold Team, LLC (“Bold”) is an Arkansas limited liability company with its principal place of business located in Cotton Plant, Woodruff County, Arkansas. Bold is a licensed medical marijuana cultivator.

4. Plaintiff Natural State Medicinals Cultivation, LLC (“Natural State Medicinals”) is an Arkansas limited liability company with its principal place of business located in White Hall, Jefferson County, Arkansas. Natural State Medicinals is a licensed medical marijuana cultivator.

5. Plaintiff Natural State Wellness Enterprises, LLC (“Natural State Wellness”) is an Arkansas limited liability company with its principal place of business located in Newport, Jackson County, Arkansas. Natural State Wellness is a licensed medical marijuana cultivator.

6. Defendant Arkansas Department of Finance and Administration (“DFA”) is an agency of the State of Arkansas.

7. Defendant Arkansas Alcoholic Beverage Control Division (“ABC”) is a division of DFA.

8. Defendant Arkansas Medical Marijuana Commission (“MMC”) is an Arkansas administrative body created under Article 19 of the Arkansas Medical Marijuana Amendment of 2016 (“Amendment 98”) of the Constitution of the State of Arkansas of 1874.

9. Defendant Carpenter Farms Medical Group, LLC (“Carpenter Farms”) is an Arkansas limited liability company. Carpenter Farms was awarded a medical marijuana cultivation license by the MMC on June 16, 2020 and, as such, is being named as a defendant as a potential interested party pursuant to Ark. Rule Civ. P. 19.

10. Defendant River Valley Relief Cultivation, LLC (“River Valley”) is an Arkansas limited liability company. River Valley was awarded a medical marijuana cultivation license by the MMC on June 30, 2020 and, as such, is being named as a defendant as a potential interested party pursuant to Ark. Rule Civ. P. 19.

11. Defendant New Day Cultivation, LLC (“New Day”) is an Arkansas limited liability company. New Day was awarded a medical marijuana cultivation license by the MMC on June 30, 2020 and, as such, is being named as a defendant as a potential interested party pursuant to Ark. R. Civ. P. 19.

12. This Court has jurisdiction over this cause of action pursuant to the Uniform Declaratory Judgment Act codified at Ark. Code Ann. §§16-111-101, *et seq.*, and the Administrative Procedures Act codified at Ark. Code Ann. §§25-15-201, *et seq.* (“APA”).

13. This Court has jurisdiction to enjoin the MMC from committing an unlawful act or acting *ultra vires*. See *Bd. of Trustees of Univ. of Arkansas v. Burcham*, 2014 Ark. 61, 3–4 (“[A] state agency may be enjoined if it can be shown (1) that the pending action of the agency is ultra vires or without the authority of the agency, or (2) that the agency is about to act in bad faith, arbitrarily, capriciously, and in a wantonly injurious manner.”)

14. Venue is proper in this Court, pursuant to Ark. Code Ann. §§ 25-15-207(b), 16-60-104(2)(B), and 16-60-101, as Osage’s principal office is located in Carroll County, Arkansas, and does business in that county.

15. Venue is proper as to all plaintiffs, pursuant to Ark. Code Ann. § 16-60-101(c)(1) and (2), as (1) the plaintiffs assert a right of relief arising out of the same transaction or occurrence; (2) there are a substantial number of questions of law and fact common to all plaintiffs; (3) the common questions of law or fact will predominate over individual questions of law or fact pertaining to each plaintiff; (4) the civil action can be maintained more efficiently and economically for all parties than if prosecuted separately; and (5) the interest of justice supports the joinder of the parties as plaintiffs in one civil action.

INTRODUCTION

16. This is an action for a declaratory judgment finding that the MMC failed to apply certain provisions of the MMC's Rules and Regulations Governing the Application For, Issuance, and Renewal of Licenses for Medical Marijuana Cultivation Facilities and Dispensaries in Arkansas ("MMC Rules") in issuing additional medical marijuana cultivation licenses to Carpenter Farms, River Valley and New Day, specifically Section IV, 9h of the MMC Rules. To the extent the MMC did apply Section IV, 9h of the MMC Rules, this is an action for declaratory judgment finding that the MMC should not have applied Section IV, 9h of the MMC Rules. Further, this is an action for declaratory judgment finding that the MMC acted ultra vires and arbitrarily, capriciously, in bad faith and/or in a wantonly injurious manner in issuing additional medical marijuana cultivation licenses to Carpenter Farms, River Valley and New Day. Finally, this is an action seeking a declaratory judgment finding that the MMC acted ultra vires in violating Plaintiffs' rights to Due Process under the Fourteenth Amendment of the United States Constitution and under Article II of the Arkansas Constitution. This action seeks preliminary and permanent injunctive relief against DFA, ABC and MMC, as more specifically set forth herein.

FACTUAL, LEGAL AND PROCEDURAL BACKGROUND

I. RULES APPLICABLE TO THE ISSUANCE OF INITIAL LICENSES AND ADDITIONAL LICENSES

17. In 2016 the people of Arkansas amended the Arkansas Constitution to legalize medical marijuana. Amendment 98 created the MMC to determine the qualifications for receiving a license to operate a cultivation facility or dispensary and to award such licenses. It also directed the MMC to adopt rules necessary to implement the amendment and to carry out its duties thereunder. *See* Exhibit A, Amendment 98 §8(b)(1).

18. The MMC adopted the MMC Rules which set forth, among other things, the rules and requirements that the MMC must follow with regard to issuing medical marijuana licenses to applicants. *See* Exhibit B, the MMC Rules.

19. The MMC Rules state that the MMC shall issue at least four (4), but no more than eight (8) cultivation facility licenses. *See* Exhibit B, Section IV, 2a.

20. The MMC elected to issue five medical marijuana cultivation licenses in connection with the initial application period. *See* Exhibit C, Minutes from December 20, 2016 MMC Meeting.

21. Section IV, 9h of the MMC Rules specifically states when, and only when, the MMC may issue additional licenses. Section IV, 9h states as follows:

The commission may initiate the selection process for cultivation facilities *upon determining that there are not enough cultivation facilities to supply the dispensaries within the state*, or upon revocation of any existing license by the Alcoholic Beverage Control Division.

See Exhibit B, Section IV, 9h (emphasis added).

22. The term “cultivation facilities” as used in Section IV, 9h includes licensed medical marijuana dispensaries that are also licensed to cultivate medical marijuana in connection with the

operation of the dispensary. *See* Exhibit B, Section III, 4. Currently, there are 22 medical marijuana dispensaries that are also licensed to cultivate medical marijuana in connection with the operation of the dispensary. Each dispensary licensed to cultivate is authorized to grow or possess (i) 50 mature marijuana plants at any one time; (ii) 150 immature marijuana plants at any one time; and (iii) all usable marijuana derived from the plants identified in (i) or (ii) or derived from predecessor plants. *See* Exhibit D, Rules and Regulations Governing the Oversight of Medical Marijuana Cultivation Facilities and Dispensaries by the Alcoholic Beverage Control Division (“ABC Oversight Rules”), RR 11.2.

23. The MMC Rules state that the MMC shall have the option to hold unselected applications in reserve for 24 months from the issuance date of the initial licenses in any application period with regard to the issuance of future medical marijuana cultivation licenses. *See* Exhibit B, Section IV, 9g.

24. The MMC exercised this option and elected to hold unselected applications in reserve for 24 months from the issuance date of the initial licenses. This reserve period expired on July 10, 2020. *See* Exhibit E, Minutes from July 25, 2018 MMC Meeting.

25. Pursuant to the MMC Rules, in the event the MMC determines that additional licenses should be issued within 24 months following the issuance of licenses in the most recent application period (the initial application period after which the five initial licenses were granted to Plaintiffs is the only and, therefore, most recent application period), and the MMC has exercised its option to maintain the reserve list from the last application period (which the MMC did), the MMC shall offer the next highest scoring applicant from the applications held in reserve the opportunity to pay the licensing fee, post the performance bond and obtain a license. *See* Exhibit B, Section IV, 9h(i).

26. Pursuant to the MMC Rules, if the MMC were to determine that more licenses should be issued, and the MMC did not exercise the option to maintain a reserve list, or the decision is made after 24 months following the issuance of licenses in the most recent application period, the MMC shall solicit new applications in accordance with the MMC Rules. *See* Exhibit B, Section IV, 9(ii).

27. To clarify, if the MMC declined to issue additional licenses prior to July 10, 2020 (the expiration of the 24-month reservation period), but later determined that additional licenses were necessary, it would be required to solicit new applications and conduct an entirely new application process identical to the original application process initiated in 2017.

II. THE ISSUANCE OF THE INITIAL LICENSES AND SUBSEQUENT LICENSES

28. The MMC began accepting applications for medical marijuana cultivation facilities on June 30, 2017, and imposed a deadline for receipt of applications on September 18, 2017.

29. On February 27, 2018, subsequent to Separate Defendants DFA, ABC, and MMC completing the review and scoring process of the submitted applications, the MMC announced the five successful applicants. *See* Exhibit F, Minutes from February 27, 2018 MMC Meeting. The five successful applicants were Plaintiffs, Osage, Delta Medical, Bold, Natural State Wellness, and Natural State Medicinals.

30. The Plaintiffs were awarded their licenses by the MMC on July 10, 2018. *See* Exhibit E, Minutes from July 25, 2018 MMC Meeting.

31. Plaintiffs have all constructed their cultivation facilities and all facilities have been approved by ABC. Currently, Plaintiffs Osage, Bold, and Natural State Medicinals are producing, harvesting and selling medical marijuana to dispensaries in the State of Arkansas. Plaintiffs Delta Medical and Natural State Wellness have obtained all necessary approvals from ABC, are

currently growing medical marijuana, and anticipate harvesting and selling medical marijuana in early August of 2020.

32. Upon the MMC's completion of the review and scoring process for the submitted applications, the MMC announced that the sixth, seventh and eighth highest scoring applications belonged to River Valley, New Day and 2600 Holdings, LLC d/b/a Southern Roots Cultivation, respectively. River Valley and New Day were tied for sixth, making them the sixth and seventh highest scoring applications.

33. Subsequent to the completion of the application process and the MMC's announcement of the application scores, it was made public information that applicant Carpenter Farms' application was scored by the MMC, but later disqualified by ABC. As a result, it was not included with the application scores announced by the MMC. Had Carpenter Farms' application score not been disqualified, it would have finished with the sixth highest scoring application, with River Valley and New Day finishing tied for seventh place, making them the seventh and eighth highest scoring applications.

34. On December 18, 2018, Carpenter Farms filed a lawsuit against Defendants seeking to have its application score stand and its license eligibility reinstated. *See Carpenter Farms Medical Group, LLC v. Arkansas Department of Finance Administration, et al.*, Circuit Court of Pulaski County, Arkansas, Case No. 60CV-18-8555 ("Carpenter Farms Litigation").

35. On June 5, 2020, the Arkansas Attorney General's Office, acting on behalf of the Defendants in the Carpenter Farms Litigation, entered into a settlement agreement with Carpenter Farms. The settlement agreement includes the following provisions:

- i. MMC agrees to reinstate Carpenter Farms Medical Group's application and score for a medical marijuana cultivation facility license and put it back in the reserve pool of unselected applicants as the #6 applicant next in line for a license. MMC shall so reinstate Carpenter's application

and score prior to any vote by the MMC to issue additional licenses. This will fully restore Carpenter to the position it would have been in had it not been disqualified for failure to meet minimum qualifications and allow it to lobby the MMC to issue it a license before the July 10, 2020, expiration date of the cultivation applications per MMC rules, including, but not limited to for purposes of MMC Cultivation Rule IV.9.h. MMC is already scheduled to hear from two cultivator applicants on June 8 who hope to persuade the MMC to issue the three additional licenses permitted under Amendment 98. I understand that all interested parties will not have an opportunity to speak at the June 8 meeting and, therefore, MMC will not be voting on the issue until June 16, and commits to adhere to that timeline.

ii. Any additional licenses issued by the MMC will be based on and issued in the order of scores as they stand after Carpenter's reinstatement. If the MMC extends the July 10, 2020, expiration date for the reserve pool applicants, then Carpenter shall be treated as all other reserve applicants and shall remain the 6th highest score and next in line for any additional cultivation licenses that may issue.

iii. Carpenter shall be permitted to be heard by the MMC at the June 16, 2020, MMC meeting in pursuit of persuading the MMC to issue one or more of the remaining licenses. In addition to an oral presentation, in connection with that meeting, Carpenter shall be permitted also to submit testimony, witnesses, written evidence, including declarations, letters or other documentation bearing on the issue before the MMC, namely issuance of additional licenses. MMC shall consider and include such written submissions in connections with Carpenter's request, provided they are submitted no later than Friday June 12, 2020. Carpenter Farms understands and agrees that its presentation and the MMC's decision do not constitute an adjudication under ARK. Code Ann. § 25-15-212.

iv. The MMC shall consider and vote on whether to grant additional licenses at the June 16, 2020, meeting, or any adjournment or rescheduling thereof, but in no event shall it fail to do so on or before July 9, 2020. If it fails to do so, this agreement shall become null and void.

v. The parties understand and acknowledge that the Attorney General's office, and any counsel employed by the State advising the Commission at or in connection with any vote contemplated hereby, have a duty to advise the Commission on the requirements of the law with regard to the issuance of licenses, but these attorneys shall remain neutral regarding the Commission's decision with regard to whether or not to award additional licenses. The Commission will decide whether to award additional licenses

pursuant to its Rules and based on evidence presented by the requesting reserve-pool applicants.

vi. MMC is already in the process of revising and readopting its rules and will state the reasons, if any, why it is impractical to adopt the Attorney General's model rules.

vii. Defendants understand and acknowledge that Carpenter Farms may file a claim for recoupment of the reasonable attorneys' fees and costs expended in this matter before the Arkansas State Claims Commission, up to and including the negotiation of this settlement agreement and winding down the state-court lawsuit but not including and post-settlement lobbying effort before the MMC. Defendants agree not to contest that claim *provided that* the amount claimed is supported by notarized affidavits of the billing attorneys as well as itemized billing records showing the date, time spent, a description of the task(s) performed, and documentation supporting the amount of all expenses claimed.

viii. In consideration of the foregoing, Carpenter Farms will withdraw its request for an expedited discovery schedule on June 9, 2020. Upon MMC's reinstatement of Carpenter's score and rank on June 16, 2020, provided that the Commission votes on whether to issue additional licenses on that date, or on such later date up to and including July 9, 2020, when the Commission so votes, Carpenter will file a motion to voluntarily nonsuit its complaint in the referenced matter with prejudice, submit a proposed order of dismissal with prejudice to the Court forthwith, and agree not to disparage the Defendants or any of their staff. The parties shall keep this agreement confidential until after they present these terms to the Board at the June 16, 2020, meeting. The parties understand and agree that the Court will retain continuing jurisdiction to enforce the terms of this agreement.

ix. The parties intend that this agreement fully and finally resolve any and all claims that Carpenter may have based on the events set forth in its complaint *except* Carpenter's claim for attorneys' fees and costs referenced in Paragraph 7 above.

See Exhibit G, Settlement Agreement.

36. On June 16, 2020, the MMC voted to approve the settlement agreement between Carpenter Farms and the Defendants in the Carpenter Farms Litigation. Upon information and belief, the MMC was aware in advance of the June 16, 2020 commission meeting that it would be

considering the approval of the aforementioned proposed settlement agreement, but did not provide any notice to the public, the Plaintiffs, or the other applicants whose applications and scores were held in the reserve.

37. On June 16, 2020, the MMC also voted to issue one additional cultivation license and awarded the license to Carpenter Farms as the sixth place applicant in the reserve pool. Upon information and belief, the MMC was aware in advance of this meeting that it would be voting on whether it would award additional medical marijuana cultivation licenses, but did not provide any notice to the public, the Plaintiffs or the other applicants whose applications and scores were held in the reserve.

38. During the June 16, 2020 commission meeting, the motion that was made by Commissioner Story to issue a sixth cultivation license was “Motion to issue one additional cultivation license . . . We find there is current need in order to award a sixth cultivator license.” This motion was approved 5-0. At the conclusion of the vote, Chairwoman Henry-Tillman stated “[t]hat motion just passed to open up one additional cultivation license. That motion was passed and based on our rules and regulations, Section 9h(i). It will be offered to next in line to pay license fee and performance bond.”

39. During the June 16, 2020 commission meeting, the MMC announced that it would meet again on June 30, 2020.

40. During the June 30, 2020 commission meeting, Commissioner Smith made a motion “to go ahead and issue the remaining cultivation licenses (license 7 and 8) for the State of Arkansas.” The motion passed 3-2. As a result, the seventh and eighth cultivation licenses were awarded to River Valley and New Day. Upon information and belief, the MMC was aware in advance of the June 30, 2020 commission meeting that it would be voting on whether it would

award additional medical marijuana cultivation licenses, but did not provide reasonable notice to the public, the Plaintiffs, or the other applicants whose applications and scores were held in the reserve.

CAUSES OF ACTION

COUNT 1 – MMC FAILED TO APPLY SECTION IV, 9h OF THE RULES IN AWARDING THE ADDITIONAL CULTIVATION LICENSES

41. Plaintiffs hereby incorporate all above and below sections as if set forth herein word for word.

42. It is axiomatic that state agencies and commissions must apply their rules when carrying out their duties and obligations. Consequently, the MMC was required to apply the MMC Rules in conjunction with issuing additional cultivation licenses.

43. The MMC Rules include specific provisions that must be applied when the MMC elects to award additional cultivation licenses. Section IV, 9h of the MMC Rules states as follows:

The commission may initiate the selection process for cultivation facilities ***upon determining that there are not enough cultivation facilities to supply the dispensaries within the state***, or upon revocation of any existing license by the Alcoholic Beverage Control Division.

See Exhibit B, Section IV, 9h (emphasis added).

44. The MMC failed to apply Section IV, 9h of the Rules in that it did not determine that there are not enough cultivation facilities to supply the dispensaries within the state in conjunction with its decision to issue additional cultivation licenses to Carpenter Farms, River Valley and New Day.

45. On June 16, 2020, the MMC conducted a commission meeting. During this meeting, and without any notice to the Plaintiffs, public or applicants in the reserve pool, the MMC

voted to issue an additional cultivation license to the reserve applicant with the sixth highest score, or Carpenter Farms.

46. In conjunction with the issuance of this sixth license, Commissioner Story made the following motion:

“Motion to issue one additional cultivation license . . . We find there is current need in order to award a sixth cultivator license.”

47. Commissioner’s Storey’s motion was approved 5-0.

48. After the motion was approved, Chairwoman Henry-Tillman stated:

“[t]hat motion just passed to open up one additional cultivation license. That motion was passed and based on our rules and regulations, Section 9h(i). It will be offered to next in line to pay license fee and performance bond.”

49. In the making of his motion, Commissioner Story did not apply Section IV, 9h of the Rules and did not determine that there were not enough cultivation facilities to supply the dispensaries within the state.

50. The remaining commissioners, when voting to approve the motion 5-0, did not apply Section IV, 9h of the Rules and did not determine that there were not enough cultivation facilities to supply the dispensaries within the state.

51. In confirming the motion, Chairwoman Henry-Tillman did not apply Section IV, 9h of the Rules and did not determine that there were not enough cultivation facilities to supply the dispensaries within the state. In fact, Chairwoman Henry-Tillman merely stated that the motion passed and that an additional cultivation license would be issued pursuant Section IV, 9h(i) (a subsection providing that any additional licenses must be awarded to the next highest scoring applicant if the license is issued within 24 months of the original issuance of licenses and the MMC exercised its option to maintain the reserve list from the last application period).

52. The minutes from the June 16, 2020 commission meeting demonstrate that the MMC did not apply Section IV, 9h of the MMC Rules and did not make a determination that there were not enough cultivation facilities to supply the dispensaries within the state.

53. Consequently, the MMC failed to apply Section IV, 9h of the MMC Rules when issuing a sixth cultivation license to Carpenter Farms.

54. On June 30, 2020, the MMC conducted a commission meeting. During the meeting, and without any prior notice to Plaintiffs, the public or applicants in the reserve pool, the MMC voted to issue the final two final cultivation licenses to the reserve applicants with the seventh and eighth highest application scores, or River Valley and New Day.

55. In conjunction with the issuance of the seventh and eighth licenses, Commissioner Smith made a motion “to go ahead and issue the remaining cultivation licenses [license 7 and 8] for the State of Arkansas.”

56. Commissioner Smith’s motion passed 3-2.

57. In the making of his motion, Commissioner Smith did not apply Section IV, 9h of the MMC Rules and did not determine that there were not enough cultivation facilities to supply the dispensaries within the state.

58. The remaining commissioners voting in favor of the motion did not apply Section IV, 9h of the Rules and did not determine that there were not enough cultivation facilities to supply the dispensaries within the state.

59. In confirming the motion, Chairwoman Henry-Tillman did not apply Section IV, 9h of the Rules and did not determine that there were not enough cultivation facilities to supply the dispensaries within the state.

60. Consequently, the MMC failed to apply Section IV, 9h of the MMC Rules when issuing the seventh and eighth cultivation licenses to River Valley and New Day.

61. “Section 207 [of the APA] permits an injured party to bring a declaratory-judgment action challenging a rule’s ‘validity or applicability.’” *Ark. Dep’t. of Fin. & Admin. v. Carpenter Farms Med. Grp., LLC*, 2020 Ark. 213, *10 (2020).

62. The Arkansas Supreme Court held in *Ark. Dep’t. of Fin. & Admin. v. Naturalis Health, LLC*, 2018 Ark. 224 (2018), that Section 207 of the APA authorizes actions seeking a declaration whether a rule should be applied, i.e. an applicability challenge. *Ark. Dep’t. of Fin. & Admin. V. Naturalis Health, LLC*, 2018 Ark. 224, *10 (2018). Seeking a declaration regarding whether a rule should have been applied (as opposed to seeking a declaration as to whether a rule was applied properly) is proper under Section 207. *Id.*

63. As set forth above, the MMC failed to apply Section IV, 9h of the MMC Rules in conjunction with its decisions to issue additional cultivation licenses.

64. Plaintiffs are entitled to a declaratory judgment pursuant to Section 207 of the APA finding that the MMC failed to apply Section IV, 9h of the MMC Rules in awarding the additional cultivation licenses.

65. As set forth herein, Plaintiffs have been damaged as a result of the MMC’s failure to apply Section IV, 9h of the MMC Rules and are entitled to the preliminary and permanent injunctive relief requested herein.

**COUNT 2 - THE MMC ACTED ULTRA VIRES IN AWARDING THE
ADDITIONAL CULTIVATION LICENSES**

66. Plaintiffs hereby incorporate all above and below sections as if set forth herein word for word.

67. The Supreme Court of Arkansas has long held a state agency may be enjoined if it can be shown that the agency's pending action is ultra vires or outside the authority of the agency. *Ark. Dep't of Envtl. Quality v. Oil Producers of Ark.*, 2009 Ark. 297, *6 (2009); *see also Toan v Falbo*, 268 Ark. 337, 338 (1980) (equity has jurisdiction to enjoin or restrain officers of state agencies from acts which are ultra vires or beyond the scope of their authority).

68. The MMC Rules specifically state when the MMC can issue additional cultivation licenses beyond the initial five issued to Plaintiffs.

69. As stated above, Section IV, 9h states as follows:

The commission may initiate the selection process for cultivation facilities ***upon determining that there are not enough cultivation facilities to supply the dispensaries within the state***, or upon revocation of any existing license by the Alcoholic Beverage Control Division.

See Exhibit B, Section IV, 9h (emphasis added).

70. The MMC did not determine that there are not enough cultivation facilities to supply dispensaries within the state in conjunction with issuing the sixth cultivation license to Carpenter Farms and the seventh and eighth cultivation licenses to River Valley and New Day.

71. Rather, the MMC elected to issue the sixth, seventh and eighth cultivation licenses based upon reasons other than a determination that there are not enough cultivation facilities to supply the dispensaries within the state and that are not permitted by the Rules. These reasons include:

- i. to correct an asserted injustice or wrong perpetrated by the ABC and MMC against Carpenter Farms;
- ii. to attempt to lower the cost of medical marijuana to patients;
- iii. patient access;
- iv. in anticipation of an increased number of patients in the future; and
- v. to ensure that the additional licenses were issued prior to the expiration of the application reservation period expiring July 10, 2020 in order to avoid having to conduct a new application process that would be required in the event additional licenses were issued subsequent to July 10, 2020.

72. The MMC acted ultra vires or outside the scope of its legal authority in failing to determine that there are not enough cultivation facilities to supply the dispensaries within the state prior to issuing the additional cultivation licenses and by issuing the additional cultivation licenses for reasons not permitted by the MMC Rules.

73. Plaintiffs are entitled to a declaratory judgment that the MMC acted ultra vires or outside the scope of their legal authority in connection with its issuance of the additional cultivation licenses to Carpenter Farms, River Valley and New Day.

74. As set forth herein, Plaintiffs have been damaged as a result of the MMC's ultra vires actions and are entitled to the preliminary and permanent injunctive relief requested herein.

COUNT 3 - THE MMC ACTED ARBITRARILY, CAPRICIOUSLY AND/OR IN BAD FAITH IN AWARDING THE ADDITIONAL CULTIVATION LICENSES

75. Plaintiffs hereby incorporate all above and below sections as if set forth herein word for word.

76. The Supreme Court of Arkansas has held that a state agency may be enjoined from acting arbitrarily, capriciously, in bad faith or in a wantonly injurious manner. *Ark. Dep't of Env'tl. Quality v. Oil Producers of Ark.*, 2009 Ark. 297, *6 (2009).

77. The MMC acted arbitrarily, capriciously, in bad faith and/or in a wantonly injurious manner in issuing the additional cultivation licenses to Carpenter Farms, River Valley and New Day.

78. The MMC Rules specifically state when the MMC can issue additional cultivation licenses beyond the initial five issued to Plaintiffs.

79. As stated above, Section IV, 9h of the Rules states as follows:

The commission may initiate the selection process for cultivation facilities ***upon determining that there are not enough cultivation facilities to supply the dispensaries within the state***, or upon revocation of any existing license by the Alcoholic Beverage Control Division.

See Exhibit B, Section IV, 9h (emphasis added).

80. There are no reasons set forth in the MMC Rules other than those set forth in Section IV, 9h that authorize the MMC to issue additional cultivation licenses.

81. The MMC did not make a determination that there are not enough cultivation facilities to supply dispensaries within the state prior to issuing the additional cultivation licenses to Carpenter Farms, River Valley and New Day – the only permissible reason authorizing it to issue additional cultivation licenses.

82. Rather, the MMC elected to issue the sixth, seventh and eighth cultivation licenses based upon reasons other than a determination that there are not enough cultivation facilities to supply the dispensaries within the state and that are not permitted by the MMC Rules. These reasons include:

- i. to correct an asserted injustice or wrong perpetrated by the ABC and MMC against Carpenter Farms;
- ii. to attempt to lower the cost of medical marijuana to patients;
- iii. patient access;
- iv. in anticipation of an increased number of patients in the future; and
- iv. to ensure that the additional licenses were issued prior to the expiration of the application reservation period expiring July 10, 2020 in order to avoid having to conduct a new application process that would be required in the event additional licenses were issued subsequent to July 10, 2020.

83. Further, the information and documentation presented and/or submitted to, and presumably considered by, the MMC in connection with issuing the additional cultivation licenses clearly established that there are enough cultivation facilities to supply the dispensaries in the state. The information and documentation included the following facts:

- i. All 33 licensed dispensaries recently applied to have their dispensary licenses renewed. During MMC meetings to renew dispensary licenses, Commissioner Story asked most, if not all, of the dispensary licensees seeking a renewal of their license if they had any supply issues with cultivators, and all that were asked responded that they did not.
- ii. Commissioner Story stated in the MMC's June 16, 2020 meeting that, based upon his review of the production and sales figures provided to the MMC by ABC, he found there to be one to three months of supply surplus. In other words, if all cultivators stopped cultivating on June 16, 2020, there would be enough medical marijuana to supply patients for one to three months.

- iii. The data provided by ABC with regard to the cultivation, sale and purchase of medical marijuana clearly shows that the three Plaintiffs currently cultivating medical marijuana are supplying more to dispensaries throughout the state than is being purchased by patients. Obviously, with the addition of the medical marijuana cultivated and sold by the remaining Plaintiffs in early August 2020, there will be an even larger surplus when comparing the amount of medical marijuana cultivated by the cultivators and sold by the dispensaries to patients. Further, when medical marijuana produced by dispensaries that are licensed to cultivate is taken into account, there will be additional surplus.
- iv. As of July 10, 2020, there were 66,594 medical marijuana card holders in Arkansas. The data submitted to the MMC clearly shows that, at the current average rate of consumption by patients, the Plaintiffs will be able to adequately supply in excess of 100,000 patients. This does not include the amount of medical marijuana cultivated by licensed dispensaries and supplied to patients.

84. The MMC acted arbitrarily, capriciously, in bad faith and/or in a wantonly injurious manner by failing to determine that there are not enough cultivation facilities to supply the dispensaries throughout the state before issuing the additional cultivation licenses.

85. Further, the MMC acted arbitrarily, capriciously, in bad faith and/or in a wantonly injurious manner by deciding to issue the additional cultivation licenses for reasons other than those permitted by the MMC Rules.

86. Finally, to the extent the MMC did determine that there are not enough cultivation facilities to supply the dispensaries throughout the state (which Plaintiffs deny), the MMC acted arbitrarily, capriciously, in bad faith and/or in a wantonly injurious manner in making such a determination when the information presented to them so clearly reflects that there is not a current supply issue and that the Plaintiffs will be able to supply enough to meet the demands in excess of 100,000 patients.

87. Plaintiffs are entitled to a declaratory judgment that the MMC acted arbitrarily, capriciously, in bad faith and/or in a wantonly injurious manner in connection with its issuance of the additional cultivation licenses to Carpenter Farms, River Valley and New Day.

88. As set forth herein, Plaintiffs have been damaged as a result of the MMC acting arbitrarily, capriciously, in bad faith and/or in a wantonly injurious manner in connection with the issuance of the additional cultivation licenses and are entitled to the preliminary and permanent injunctive relief requested herein.

COUNT 4 – TO THE EXTENT THE MMC APPLIED SECTION IV, 9h OF THE RULES, THE MMC ERRED IN APPLYING THE RULE

89. Plaintiffs hereby incorporate all above and below sections as if set forth herein word for word.

90. As stated above, Section IV, 9(h) provides:

“The commission may initiate the selection process for cultivation facilities upon determining that there are not enough cultivation facilities to supply the dispensaries within the state, or upon revocation of any existing license by the Alcoholic Beverage Control Division.”

See Exhibit B, Section IV, 9h (emphasis added).

91. Although Plaintiffs maintain that the MMC did not apply Section IV, 9(h) of the MMC Rules, to the extent the MMC argues that it did, the MMC improperly applied the rule.

92. On June 16, 2020, the day the MMC awarded the sixth cultivation license to Carpenter Farms, only three of the five already-licensed cultivation facilities were producing and distributing medical marijuana. The remaining two cultivation facilities will be producing and distributing medical marijuana in early August of 2020.

93. A decision on supply shortages cannot be made if two licensed cultivation facilities will not be producing and distributing medical marijuana until early August of 2020.

94. Section IV, 9(h) cannot be applied by the MMC until all cultivation facilities licensed are actually producing and selling medical marijuana to the dispensaries.

95. To apply Section IV, 9(h) without information on the supply capabilities of the additional two licensed cultivation facilities is premature.

96. Indeed, the evidence presented at the June 16, 2020 meeting demonstrated that, with the three cultivators already producing and distributing medical marijuana, the supply was more than adequate. The supply will only increase once the additional two cultivation licensees are producing and distributing medical marijuana.

97. To the extent the MMC argues that it applied Section IV, 9(h) on June 16, 2020, the MMC erred in implementing that section of its rules.

98. The actions taken by the MMC on June 30, 2020, are even more egregious.

99. On June 30, 2020, the MMC awarded the seventh and eighth cultivation licenses to River Valley and New Day. At that time, only three of the six already-licensed cultivation facilities were producing and distributing medical marijuana with two of the other cultivators to begin producing and distributing medical marijuana in early August 2020. And the most recent licensee, Carpenter Farms, has not yet begun cultivation.

100. A decision on supply shortages cannot be made in June of 2020 when two licensed cultivation facilities will begin producing and distributing medical marijuana in early August 2020, and a third newly-licensed cultivation facility has not yet begun cultivation.

101. Section IV, 9(h) cannot be applied by the MMC until all cultivation facilities licensed are actually producing and selling medical marijuana to the dispensaries.

102. To apply Section IV, 9(h) without information on the supply capabilities of the additional three licensed cultivation facilities is premature.

103. Indeed, the evidence presented prior to and at the June 30, 2020 meeting demonstrated that, with the three cultivators already producing and distributing medical marijuana, the supply was more than adequate. The supply will only increase once the additional three cultivation licensees are producing and distributing medical marijuana.

104. To the extent the MMC argues that it applied Section IV, 9(h) on June 30, 2020, the MMC erred in implementing that section of its rules.

105. “Section 207 [of the APA] permits an injured party to bring a declaratory-judgment action challenging a rule’s ‘validity or applicability.’” *Ark. Dep’t. of Fin. & Admin. V. Carpenter Farms Med. Grp., LLC*, 2020 Ark. 213, *10 (2020).

106. The Arkansas Supreme Court held in *Ark. Dep’t. of Fin. & Admin. V. Naturalis Health, LLC*, 2018 Ark. 224 (2018), that Section 207 of the APA authorizes actions seeking a declaration whether a rule should be applied, i.e. an applicability challenge. *Ark. Dep’t. of Fin. & Admin. v. Naturalis Health, LLC*, 2018 Ark. 224, *10 (2018). A seeking of a declaration regarding whether a rule should have been applied (as opposed to seeking a declaration as to whether a rule was applied properly) is proper under Section 207. *Id.*

107. As set forth above, the MMC failed to apply Section IV, 9h of the MMC Rules in determining to issue additional cultivation licenses during its meetings on June 16, 2020, and June 30, 2020

108. Further, to the extent the MMC argues that it did apply Section IV, 9h, such application was in violation of the plain language of the rule because it was premature to determine whether the existing cultivation facilities are adequate to supply the cultivators.

109. Plaintiffs are entitled to a declaratory judgment pursuant to Section 207 of the APA, finding that the MMC erred failing to apply Section IV, 9h of the MMC Rules on June 16, 2020, and June 30, 2020, or in the alternative, that it erred in applying the rule because such application was premature.

110. As set forth herein, Plaintiffs have been damaged as a result of the MMC's applying Section IV, 9h and are entitled to the preliminary and permanent injunctive relief requested herein.

COUNT 5 – THE MMC ACTED ULTRA VIRES BY VIOLATING PLAINTIFFS' RIGHT TO DUE PROCESS UNDER THE 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION AND UNDER ARTICLE II OF THE ARKANSAS CONSTITUTION

111. Plaintiffs hereby incorporate all above and below sections as if set forth herein word for word.

112. The Fourteenth Amendment to the U.S. Constitution states, "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV.

113. Article 2, § 8 of the Arkansas Constitution provides, in pertinent part, “No person shall . . . be deprived of life, liberty or property, without due process of law.” Ark. Const. Art. 2, § 8.

114. “Due process is intended to protect the individual from the arbitrary exercise of the powers of government. . . . Due process controls the procedures by which the state or federal government may take life, liberty, or property, and it may prevent governmental action no matter what procedures are made available.” *Johnson v. Encompass Ins. Co.*, 355 Ark. 1, 6 (2003).

115. “Procedural due process guarantees that a state proceeding which results in deprivation of property is fair . . .” *Id.* “[T]he basic constitutional due process requirements of notice and a reasonable opportunity to be heard are mandatory prerequisites to divest a property owner of his interest.” *First Nat’l Bank v. Arkansas State Bank Comm’r*, 301 Ark. 1 (1989).

116. Due process requires reasonable notice and a reasonable opportunity to be heard. *Tillery v. Meadows Constr. Co.*, 284 Ark. 241, 246 (1984).

117. The MMC’s granting of medical marijuana cultivation licenses to Plaintiffs created a property interest held by Plaintiffs.

118. Prior to awarding the original five medical marijuana cultivation licenses to Plaintiffs, the MMC determined that it would only award five medical marijuana cultivation licenses, with the prospect to add more *only upon the determination that there are not enough cultivation facilities to supply the dispensaries within the state.*

119. Depending on the decision of the MMC to award only five medical marijuana cultivation licenses and the MMC Rules which allow for additional licenses *only upon the determination that there are not enough cultivation facilities to supply the dispensaries within the*

state, each of the Plaintiffs made financial calculations to determine if obtaining a medical marijuana cultivation license would be in their financial benefit.

120. These decisions were made in anticipation of each medical marijuana cultivation license-holder maintaining approximately one-fifth of the medical marijuana market share, unless and until there are not enough cultivation facilities to supply the dispensaries within the state.

121. With the understanding that each medical marijuana cultivation license-holder would maintain approximately one-fifth of the medical marijuana market share, unless and until there are not enough cultivation facilities to supply the dispensaries within the state, the Plaintiffs applied for medical marijuana cultivation licenses.

122. With the understanding that each medical marijuana cultivation license-holder would maintain approximately one-fifth of the medical marijuana market share, unless and until there are not enough cultivation facilities to supply the dispensaries within the state, the Plaintiffs, once selected for a medical-marijuana license, paid the \$100,000.00 license fee and submitted a \$500,000.00 performance bond.

123. With the understanding that each medical marijuana cultivation license-holder would maintain approximately one-fifth of the medical marijuana market share, unless and until there are not enough cultivation facilities to supply the dispensaries within the state, the Plaintiffs expended millions of dollars building medical marijuana cultivation facilities which comply with all the specifications established by the MMC and ABC.

124. Importantly, due to the nature of the medical marijuana industry, the vast majority of the monies expended by the Plaintiffs were not obtained through loans. These monies were personal monies put forth by the owners of each of the medical marijuana cultivation facilities.

125. The Plaintiffs had a reasonable expectation to recoup their investment through the one-fifth market share of the medical marijuana market, and to make a profit. This reasonable expectation was based on the clear understanding that the MMC would not unlawfully dilute the Plaintiffs' market share through the addition of cultivation facilities absent evidence that the cultivators could not supply the dispensaries within the state.

126. In the span of fourteen days, the MMC drastically reduced the market share of each of the Plaintiffs by licensing three additional cultivation facilities. This reduced the market share of each Plaintiff from 20% to 12.5%, a 37.5% reduction of their original market share.

127. On June 16, 2020, the MMC awarded the sixth additional cultivation license to Carpenter Farms. This decision was made without providing Plaintiffs with reasonable notice or a reasonable opportunity to be heard. The agenda published on June 15, 2020, gave no indication that the MMC was considering granting a sixth cultivation license. No notice or agenda was provided to the Plaintiffs by the MMC, ABC, or DFA.

128. On June 30, 2020, the MMC awarded the seventh and eighth additional cultivation licenses to River Valley and New Day. This decision was made without providing Plaintiffs with reasonable notice or a reasonable opportunity to be heard. The agenda published on June 29, 2020, did not indicate that the MMC would be voting on whether to grant additional licenses. Although the agenda lists "Expansion of Cultivation and Dispensary Licenses," as an agenda item, there was no language in the agenda giving Plaintiffs notice of the intent to vote on that issue. No notice or agenda was provided to the Plaintiffs by the MMC, ABC, or DFA.

129. The decisions of the MMC to grant the sixth, seventh, and eighth cultivation licenses were made without reasonable notice to Plaintiffs and without providing Plaintiffs with a reasonable opportunity to be heard.

130. The MMC violated Plaintiffs' right to due process.

131. Plaintiffs are entitled to a declaratory judgment that the MMC violated their right to due process in connection with the issuance of the additional cultivation licenses to Carpenter Farms, River Valley and New Day.

132. As set forth herein, Plaintiffs have been damaged as a result of the MMC's violation of their right to due process in connection with the issuance of the additional cultivation licenses and are entitled to the preliminary and permanent injunctive relief requested herein.

REQUEST FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

I. STANDARD

133. Plaintiffs hereby incorporate all above and below sections as if set forth herein word for word.

134. Pursuant to Ark. R. Civ. P. 65(a), this Court may issue a preliminary injunction if (1) irreparable harm will result in the absence of the injunction; and (2) the movant has demonstrated a likelihood of success on the merits. *Baptist Health v. Murphy*, 362 Ark. 506, 509 (2005).

135. "Irreparable harm is the touchstone of injunctive relief." *Wait v. Elmen*, 2017 Ark. App. LEXIS 736, *4 (2017). Irreparable harm "cannot be adequately compensated by money damages or redressed in a court of law." *Id.*

136. To demonstrate a likelihood of success on the merits, Plaintiffs must "show a reasonable probability of success in the litigation." *Custom Microsystems, Inc. v. Blake*, 344 Ark. 536, 546 (2001).

137. Once these two elements are met, the requesting party is entitled to a preliminary injunction.

II. PLAINTIFFS ARE ENTITLED TO PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

138. Plaintiffs hereby incorporate all above and below sections as if set forth herein word for word.

139. Plaintiffs meet both elements of the standard for a preliminary injunction.

140. Without a preliminary injunction, Plaintiffs will suffer irreparable harm.

141. In issuing the additional three medical marijuana cultivation licenses, the MMC has greatly diluted the Plaintiffs' market share in the medical marijuana industry and disrupted sales of Plaintiffs' medical marijuana to their dispensary customers. The illegal actions of the MMC will result in a loss of Plaintiffs' long-term dispensary customers and a reduction in sales of medical marijuana, both of which will have an adverse economic effect on Plaintiffs, for which there is no legal means of redress.

142. Prior to issuance of the additional medical marijuana cultivation licenses, Plaintiffs expected to maintain approximately one-fifth of the market share in the Arkansas medical marijuana industry, unless and until there are not enough cultivation facilities to supply the dispensaries within the state. With the addition of three more licenses, the market share of each Plaintiff will be reduced from 20% to 12.5%, a 37.5% reduction of their original market share.

143. Currently, Plaintiffs distribute their medical marijuana products to the dispensaries licensed in the State of Arkansas. With three additional medical marijuana licensees, these sales will be disrupted. Indeed, it is possible that Plaintiffs will lose dispensary customers they have had since the beginning of their distribution of medical marijuana products, resulting in significant economic loss, for which there is no legal means of redress.

144. Harms related to market share, sales, and customer relationships have been found irreparable in courts around the country.¹

145. Plaintiffs anticipate presenting concrete evidence at the preliminary injunction hearing of the financial harms they will suffer if a preliminary injunction is not granted.

146. Although the three additional licensees, Carpenter Farms, River Valley Relief, and New Day Cultivation are not currently operational, based on statements made by owners of the three additional licensees, Plaintiffs believe they will each be operational within a few months and certainly before conclusion of this litigation.

147. The harms of market-share dilution, disruption of sales, and loss of long-term customers will be suffered before conclusion of this litigation.

148. The harm Plaintiffs will sustain, while financial, cannot be remedied in a court of law.

149. Arkansas courts have held that financial harm is not irreparable if money damages can be sought. *Three Sisters Petroleum v. Langley*, 348 Ark. 167, 176 (2002).

150. In this case, money damages are not available.

151. Throughout this Complaint, Plaintiffs maintain that entities of the State of Arkansas - DFA, ABC, and the MMC - have violated the law. Money damages may not be pursued against

¹ See *TEK Global, S.R.L. v. Sealant Sys. Int'l*, 920 F.3d 777, 793 (Fed. Cir. 2019) (“Head-to-head competition and lost market share tend to evidence irreparable harm.”); *Robert Bosch LLC v. Pylon Mfg. Corp.*, 659 F.3d 1142, 1152-55 (Fed. Cir. 2011) (finding irreparable harm due to lost market share, lost business opportunities, and price erosion); *Novartis Consumer Health, Inc. v. Johnson & Johnson*, 290 F.3d 578, 595-96 (3d Cir. 2002) (finding loss of market share constitutes irreparable harm); *Everett Labs, Inc. v. Breckenridge Pharm., Inc.*, 573 F. Supp.2d 855, 867-68 (D.N.J., Aug. 26, 2008); *P&G v. Ultreo, Inc.*, 574 F. Supp.2d 339, 353 (S.D.N.Y., Aug. 28, 2008) (“[C]ourts have granted preliminary injunctions based on evidence that plaintiffs are being irreparably harmed because they are losing market share.”); *Travelers Express Co. v. Transaction Tracking Techs, Inc.*, 305 F. Supp.2d 1090, 1094-95 (D. Minn., Nov. 7, 2003) (“In some circumstances, a finding of irreparable harm may be based on a loss of market share or loss of long-term customers”); *Cordis Corp. v. Medtronic, Inc.*, 1986 U.S. Dist. LEXIS 17091, *9-10 (finding that disruption of sales and loss of market share can constitute irreparable harm).

the State of Arkansas. Therefore, if the preliminary injunction is not granted, Plaintiffs will be damaged financially and will have no avenue to pursue relief for the financial damage.

152. The only way to remedy this is to prevent the financial damage from occurring at the onset of litigation, through a preliminary injunction.

153. Plaintiffs are also likely to succeed on the merits of this litigation.

154. At the hearing on this request for preliminary injunction, Plaintiffs anticipate presenting indisputable evidence that the MMC erred with respect to Section IV, 9(h) of the Rules.

155. At the hearing on this request for preliminary injunction, Plaintiffs anticipate presenting indisputable evidence that the actions taken by the MMC were ultra vires and arbitrary, capricious, in bad faith, and/or in a wantonly injurious manner.

156. At the hearing on this request for preliminary injunction, Plaintiffs anticipate presenting indisputable evidence that the actions taken by the MMC were ultra vires by violating Plaintiffs' due process rights as secured by the United States Constitution and the Arkansas Constitution.

157. There is a reasonable probability of Plaintiffs' success on the merits.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, Osage Creek Cultivation, LLC, Delta Medical Cannabis Company, LLC, Bold Team, LLC, Natural State Medicinals Cultivation, LLC, and Natural State Wellness Enterprises, LLC, pray for the following relief:

(a) For a declaratory judgment that the MMC failed to apply Section IV, 9h of the MMC Rules in awarding the additional cultivation licenses;

(b) For a declaratory judgment that if the MMC applied Section IV, 9h of the MMC Rules in awarding the additional cultivation licenses, it erred in applying the rule;

(c) For a declaratory judgment that the MMC acted ultra vires or outside the scope of their legal authority in connection with its issuance of the additional cultivation licenses to Carpenter Farms, River Valley, and New Day;

(d) For a declaratory judgment that the MMC acted arbitrarily, capriciously, in bad faith and/or in a wantonly injurious manner in connection with its issuance of the additional cultivation licenses to Carpenter Farms, River Valley, and New Day;

(e) For a declaratory judgment that the MMC violated Plaintiffs' right to due process in connection with its issuance of the additional cultivation licenses to Carpenter Farms, River Valley, and New Day;

(f) That, if any of the additional medical marijuana cultivation licenses have not been issued, Separate Defendants, DFA, ABC, and MMC, preliminarily and permanently, be enjoined from issuing those licenses;

(g) That, if any of the additional medical marijuana cultivation licenses have been issued, Separate Defendants, DFA, ABC, and MMC, be enjoined, preliminarily and permanently, from taking any additional steps to approve or certify the new licenses for growing, producing, harvesting, or distributing medical marijuana;

(h) That, if any of the additional medical marijuana cultivation licenses have been issued, Separate Defendants, DFA, ABC, and MMC, be enjoined, preliminarily and permanently, by order to revoke the licenses issued and to hold the licenses issued as null and void;

(i) That Separate Defendants, DFA, ABC, and MMC be enjoined, preliminarily and permanently, from issuing licenses unless and until the MMC makes a determination that there are not enough cultivation facilities to supply the dispensaries within the state;

(j) That, if the additional medical marijuana cultivation licenses have not been issued, the decision of the MMC to award additional licenses be held void and invalid;

(k) That, if the additional medical marijuana cultivation licenses have been issued, the licenses be invalidated; and

(l) For all other just and proper relief to which Plaintiffs are entitled.

Respectfully submitted,
Osage Creek Cultivation, LLC; Delta Medical
Cannabis Company, LLC; Bold Team, LLC;
Natural State Medicinals Cultivation, LLC; and
Natural State Wellness Enterprises, LLC

By: 

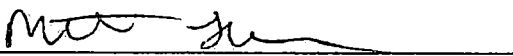
Kenneth P. "Casey" Castleberry, ABA #2003109
MURPHY, THOMPSON, ARNOLD,
SKINNER & CASTLEBERRY
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Post Office Box 2595
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(870) 793-3821 – telephone
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Eric R. Gribble, ABA #2002089
Annie Depper, ABA #2009267
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Little Rock, Arkansas 72202
(501) 374-0200 – telephone
(501) 975-7153 – facsimile
egribble@fc-lawyers.com
adepper@fc-lawyers.com

VERIFICATION

I, Matt Truelove, do hereby certify that the above information is true and correct to the best of my knowledge and belief.


Osage Creek Cultivation, LLC

By: 
Matt Truelove

_____, Officer

STATE OF Arkansas)
)
COUNTY OF Washington)

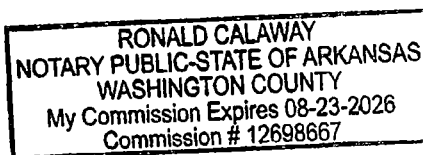
SUBSCRIBED AND SWORN to before me this 14 day of July, 2020.


Notary Public

My Commission expires:

(SEAL)


8-23-2026



VERIFICATION

I, Donald L. Parker, II, do hereby certify that the above information is true and correct to the best of my knowledge and belief.

Delta Medical Cannabis Company, LLC

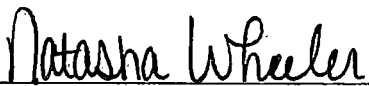
By: 
Donald L Parker, II

PRESIDENT, Officer

STATE OF Arkansas)

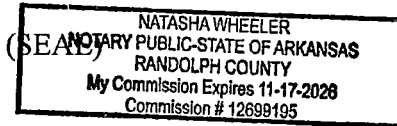
COUNTY OF Craighead)

SUBSCRIBED AND SWORN to before me this 14th day of July, 2020.


Notary Public

My Commission expires:

11-17-2026



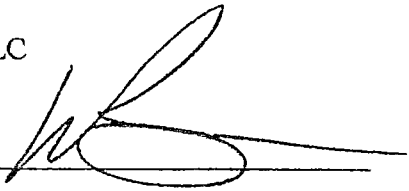
VERIFICATION

I, Danny Brown, do hereby certify that the above information is true and correct to the best of my knowledge and belief.

Bold Team, LLC

By: _____

Danny Brown



_____, Officer

STATE OF _____

AR

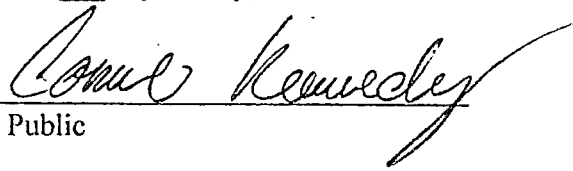
COUNTY OF _____

Jefferson

)
)
)

SUBSCRIBED AND SWORN to before me this 14 day of July, 2020.

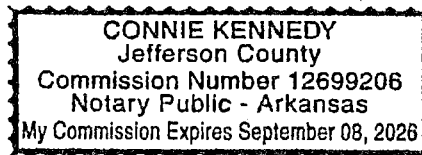
Notary Public



My Commission expires:

9-8-26

(SEAL)



VERIFICATION

I, Robert deBin, do hereby certify that the above information is true and correct to the best of my knowledge and belief.

Natural State Medicinals Cultivation, LLC

By: Robert W deBin
Robert deBin

President, Officer

STATE OF Arkansas)

COUNTY OF Jefferson)

SUBSCRIBED AND SWORN to before me this 14th day of July, 2020.

[Signature]
Notary Public

My Commission expires:

11-1-2028



VERIFICATION

I, Ben Kimbro, do hereby certify that the above information is true and correct to the best of my knowledge and belief.

Natural State Wellness Enterprises, LLC

By: B. Kimbro
Ben Kimbro

Director of Operations, Officer

STATE OF Oklahoma)
COUNTY OF Tulsa)

SUBSCRIBED AND SWORN to before me this 14th day of July, 2020.

Kassandra Hall
Notary Public

My Commission expires:

05-18-2022

(SEAL)

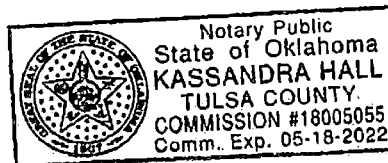


Exhibit A

Arkansas Medical Marijuana Amendment of 2016

As revised through 2017 General and First Extraordinary Sessions

§ 1. Short title.

This amendment shall be known and cited as the "Arkansas Medical Marijuana Amendment of 2016".

[As added by Const. Amend. 98.]

§ 2. Definitions.

As used in this amendment:

(1) "Acquire" or "acquisition" means coming to possess marijuana by means of any legal source herein authorized, not from an unauthorized source, and in accordance with this amendment and any rules promulgated under this amendment;

(2) "Assist" or "assisting" means helping a qualifying patient make medical use of marijuana by enabling the medical use by any means authorized under this amendment;

(3) "Cardholder" means a qualifying patient, a dispensary agent, a cultivation facility agent, or a designated caregiver;

(4) "Cultivation facility" means an entity that:

(A) Has been licensed by the Medical Marijuana Commission under § 8 of this amendment; and

(B) Cultivates, prepares, manufactures, processes, packages, sells to and delivers usable marijuana to a dispensary;

(5) "Cultivation facility agent" means an employee, supervisor, or agent of a cultivation facility who:

(A) Is twenty-one (21) years of age or older;

(B) Works at the cultivation facility; and

(C) Has registered with the Alcoholic Beverage Control Division under § 9 of this amendment;

(6) (A) "Designated caregiver" means a person who is at least twenty-one (21) years of age, has not been convicted of an excluded felony offense, has agreed to assist a physically disabled qualifying patient with the medical use of marijuana, and who has registered with the Department of Health under § 5 of this amendment.

(B) "Designated caregiver" includes without limitation a parent:

(i) Of a qualifying patient who is under the age of eighteen (18); and

(ii) Required to register as a designated caregiver under this amendment.

(C) "Designated caregiver" shall not include a member of the Arkansas National Guard or the United States military;

(7) "Dispensary" means an entity that has been licensed by the Medical Marijuana Commission under § 8 of this amendment;

(8) "Dispensary agent" means:

(A) An employee, supervisor, volunteer, or agent of a dispensary who:

(i) Is twenty-one (21) years of age or older;

(ii) Works at the dispensary; and

(iii) Has registered with the division under § 9 of this amendment; and

(B) An owner, officer, or board member of a dispensary who has registered with the division under § 8 of this amendment;

(9) "Enclosed, locked facility" means a room, greenhouse, or other enclosed area equipped with locks or other security devices that permit access only by an authorized individual;

(10) "Excluded felony offense" means:

(A) (i) (a) A felony offense as determined by the jurisdiction where the felony offense occurred.

(b) The Medical Marijuana Commission, the Department of Health, or the Alcoholic Beverage Control Division shall determine whether an offense is a felony offense based upon a review of the relevant court records concerning the conviction for the offense.

(ii) An offense that has been sealed by a court or for which a pardon has been granted is not considered an excluded felony offense; or

(B) A violation of a state or federal controlled-substance law that was classified as a felony in the jurisdiction where the person was convicted, but not including:

(i) An offense for which the sentence, including any term of probation, incarceration, or supervised release, was completed ten (10) or more years earlier; or

(ii) An offense that has been sealed by a court or for which a pardon has been granted;

(11) "Medical use" means the acquisition, possession, use, delivery, transfer, or

transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a qualifying patient's qualifying medical condition or symptoms associated with the qualifying patient's qualifying medical condition;

(12) "Physician" means a doctor of medicine or doctor of osteopathic medicine who holds a valid, unrestricted, and existing license to practice in the state of Arkansas and has been issued a registration from the United States Drug Enforcement Administration to prescribe controlled substances;

(13) "Qualifying medical condition" means one (1) or more of the following:

(A) Cancer, glaucoma, positive status for human immunodeficiency virus/acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Tourette's syndrome, Crohn's disease, ulcerative colitis, post-traumatic stress disorder, severe arthritis, fibromyalgia, Alzheimer's disease, or the treatment of these conditions;

(B) A chronic or debilitating disease or medical condition or its treatment that produces one (1) or more of the following: cachexia or wasting syndrome; peripheral neuropathy; intractable pain, which is pain that has not responded to ordinary medications, treatment, or surgical measures for more than six (6) months; severe nausea; seizures, including without limitation those characteristic of epilepsy; or severe and persistent muscle spasms, including without limitation those characteristic of multiple sclerosis; and

(C) Any other medical condition or its treatment approved by the Department of Health under § 4 of this amendment;

(14) (A) "Qualifying patient" means a person who has been diagnosed by a physician as having a qualifying medical condition and who has registered with the department under § 5 of this amendment.

(B) "Qualifying patient" shall not include a member of the Arkansas National Guard or the United States military;

(15) "Registry identification card" means a document issued by the department or the division that identifies a person as a qualifying patient, a dispensary agent, a cultivation facility agent, or a designated caregiver;

(16) "Sealed" means to expunge, remove, sequester, and treat as confidential the record or records of a felony offense;

(17) (A) "Usable marijuana" means the stalks, seeds, roots, dried leaves, flowers, oils, vapors, waxes, and other portions of the marijuana plant and any mixture or preparation thereof.

(B) "Usable marijuana" does not include the weight of any ingredients other than marijuana that are combined with marijuana and prepared for consumption as food or drink;

(18) "Visiting qualifying patient" means a patient with a qualifying medical condition who

is not a resident of Arkansas or who has been a resident of Arkansas for less than thirty (30) days and who is in actual possession of a registry identification card or its equivalent that is issued under the laws of another state, district, territory, commonwealth, or insular possession of the United States and pertains to a qualifying medical condition under this section;

(19) (A) "Written certification" means a document signed by a physician stating that in the physician's professional opinion, after having completed an assessment of the qualifying patient's medical history and current medical condition made in the course of a physician-patient relationship, the qualifying patient has a qualifying medical condition.

(B) A written certification shall specify the qualifying patient's qualifying medical condition, which also shall be noted in the physician's records.

(C) A physician shall not issue a written certificate to a patient based on an assessment performed through telemedicine.

(D) A written certification is not a medical prescription.

(20) (A) "Current use of marijuana" means use of marijuana that justifies the good faith belief of an employer that an applicant or employee is engaging in the use of marijuana.

(B) "Current use of marijuana" is presumed when a positive test result for marijuana occurs;

(21) "Employee" means an individual employed by an employer, but does not include:

(A) An individual employed by his or her parents, spouse, or child;

(B) An individual participating in a specialized employment training program conducted by a nonprofit sheltered workshop or rehabilitation facility;

(C) An individual employed outside the State of Arkansas; or

(D) An independent contractor;

(22) "Employer" means an entity that who employs nine (9) or more employees in the State of Arkansas in twenty (20) or more calendar weeks in the current or preceding calendar year;

(23) (A) "Good faith belief" means reasonable reliance on a fact, or that which is held out to be factual, without intent to deceive or be deceived and without reckless or malicious disregard for the truth.

(B) "Good faith belief" does not include a belief formed with gross negligence.

(C) "Good faith belief" may be based on any of the following:

(i) Observed conduct, behavior, or appearance;

(ii) Information reported by a person believed to be reliable, including without limitation a report by a person who witnessed the use or possession of marijuana or marijuana paraphernalia by an applicant or employee in the workplace;

(iii) Written, electronic, or verbal statements from the employee or other persons;

- (iv)** Lawful video surveillance;
- (v)** A record of government agencies, law enforcement agencies, or courts;
- (vi)** A positive test result for marijuana;
- (vii)** A warning label, usage standard, or other printed material that accompany instructions for usable marijuana;
- (viii)** Information from a physician, medical review officer, or a dispensary;
- (ix)** Information from reputable reference sources in print or on the internet;
- (x)** Other information reasonably believed to be reliable or accurate; or
- (xi)** Any combination of the items listed in subdivisions (23)(C)(i)-(x) of this section;

(24) "Positive test result for marijuana" means a result that is at or above the cutoff concentration level established by the United States Department of Transportation or the Arkansas laws regarding being under the influence, whichever is lower;

(25) (A) "Safety sensitive position" means any position involving a safety sensitive function pursuant to federal regulations governing drug and alcohol testing adopted by the United States Department of Transportation or any other rules, guidelines, or regulations adopted by any other federal or state agency.

(B) "Safety sensitive position" also means any position designated in writing by an employer as a safety sensitive position in which a person performing the position while under the influence of marijuana may constitute a threat to health or safety, including without limitation a position:

- (i)** That requires any of the following activities:
 - (a)** Carrying a firearm;
 - (b)** Performing life-threatening procedures;
 - (c)** Working with confidential information or documents pertaining to criminal investigations; or
 - (d)** Working with hazardous or flammable materials, controlled substances, food, or medicine; or
- (ii)** In which a lapse of attention could result in injury, illness, or death, including without limitation a position that includes the operating, repairing, maintaining, or monitoring of heavy equipment, machinery, aircraft, motorized watercraft, or motor vehicles as part of the job duties; and

(26) (A) "Under the influence" means symptoms of the current use of marijuana that may negatively impact the performance of the job duties or tasks or constitute a threat to health or safety.

(B) "Under the influence" includes without limitation:

- (i)** Symptoms of the applicant's or employee's speech, walking, standing, physical dexterity, agility, coordination, actions, movement, demeanor, appearance, clothing, odor,

or other irrational or unusual behavior that are inconsistent with the usual conduct of the applicant or employee;

(ii) Negligence or carelessness in operating equipment, machinery, or production or manufacturing processes;

(iii) Disregard for safety;

(iv) Involvement in an accident that results in:

(a) Damage to equipment, machinery, or property;

(b) Disruption of a production or manufacturing process; or

(c) An injury; or

(v) Other symptoms causing a reasonable suspicion that the current use of marijuana may negatively impact the performance of the job duties or tasks or constitute a threat to health or safety.

[As added by Const. Amend. 98; as amended by Acts 2017, No. 5, § 1, No. 438, § 1, No. 479, §§ 1 & 2, No. 544, § 1, No. 593, §§ 1 & 2.]

§ 3. Protections for the medical use of marijuana.

(a) A qualifying patient or designated caregiver in actual possession of a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner or denied any right or privilege, including without limitation a civil penalty or disciplinary action by a business, occupational, or professional licensing board or bureau, for the medical use of marijuana in accordance with this amendment if the qualifying patient or designated caregiver possesses not more than two and one-half ounces (2 1/2 oz.) of usable marijuana.

(b) (1) A qualifying patient or designated caregiver is presumed to be lawfully engaged in the medical use of marijuana in accordance with this amendment if the qualifying patient or designated caregiver is in actual possession of a registry identification card and possesses an amount of usable marijuana that does not exceed the amount allowed under this amendment.

(2) The presumption made in subdivision (b)(1) of this section may be rebutted by evidence that conduct related to marijuana was not for the purpose of treating or alleviating the qualifying patient's qualifying medical condition or symptoms associated with the qualifying medical condition in accordance with this amendment.

(c) A qualifying patient or designated caregiver shall not be subject to arrest, prosecution, or penalty in any manner or denied any right or privilege, including without limitation a civil penalty or disciplinary action by a business, occupational, or professional licensing board or bureau, for giving, or offering to give, up to two and one-half ounces (2 1/2 oz.) of usable marijuana to a qualifying patient or designated caregiver for the qualifying patient's medical use when nothing of value is transferred in return.

(d) A designated caregiver is not prohibited from receiving compensation or reimbursement

of expenses from a qualifying patient for assisting a qualifying patient with the medical use of marijuana.

(e) A dispensary may:

(1) Accept marijuana seedlings, plants, or usable marijuana from:

(A) Cultivation facilities;

(B) Other dispensaries in Arkansas; and

(C) If permissible under federal law, out-of-state dispensaries;

(2) Transfer or sell marijuana seedlings, plants, or usable marijuana to:

(A) Cultivation facilities;

(B) Other dispensaries in Arkansas; and

(C) If permissible under federal law, out-of-state dispensaries; and

(3) Accept marijuana seeds from any individual lawfully entitled to possess marijuana seeds, seedlings, or plants under the laws of the state in which the individual resides.

(f) (1) A school or landlord shall not refuse to enroll, refuse to lease to, or otherwise penalize an individual solely for his or her status as a qualifying patient or designated caregiver unless doing so would put the school or landlord in violation of federal law or regulations.

(2) For the purposes of medical care, including without limitation organ transplants, a qualifying patient's authorized use of marijuana in accordance with this amendment is considered the equivalent of the authorized use of any other medication used at the direction of a physician and does not constitute the use of an illicit substance.

(3) (A) An employer shall not discriminate against an applicant or employee in hiring, termination, or any term or condition of employment, or otherwise penalize an applicant or employee, based upon the applicant's or employee's past or present status as a qualifying patient or designated caregiver.

(B) A cause of action shall not be established against an employer based upon, and an employer is not prohibited from, any of the following actions:

(i) Establishing and implementing a substance abuse or drug-free workplace policy that may include a drug testing program that complies with state or federal law and taking action with respect to an applicant or employee under the policy;

(ii) Acting on the employer's good faith belief that a qualifying patient;

(a) Possessed, smoked, ingested, or otherwise engaged in the use of marijuana while on the premises of the employer or during the hours of employment; or

(b) Was under the influence of marijuana while on the premises of the employer or during the hours of employment, provided that a positive test result for marijuana cannot provide the sole basis for the employer's good faith belief; or

(iii) Acting to exclude a qualifying patient from being employed in or performing a safety sensitive position based on the employer's good faith belief that the qualifying patient was engaged in the current use of marijuana.

(C) The authorized or protected actions of an employer under this subdivision (f)(3) include without limitation:

(i) Implementing, monitoring, or taking measures to assess, supervise, or control the job performance of an employee;

(ii) Reassigning an employee to a different position or job duties;

(iii) Placing an employee on paid or unpaid leave; (iv) Suspending or terminating an employee;

(v) Requiring an employee to successfully complete a substance abuse program before returning to work;

(vi) Refusing to hire an applicant; or

(vii) Any combination of the actions listed in subdivisions (f)(3)(C)(i) - (f)(3)(C)(vi) of this section.

(D) (i) Damages established for an employment discrimination claim based on an applicant's or employee's past or present status as a qualifying patient or designated caregiver in violation of this amendment shall be limited to the damages available for an employment discrimination claim under § 16-123-107(c) of the Arkansas Civil Rights Act of 1993, § 16-123-101 et seq., including the statutory limits provided under § 16-123-107(c)(2)(A)(i)-(v).

(ii) Liability for back pay shall not accrue from a date more than two (2) years prior to the filing of an action.

(iii) Damages under this subdivision (f)(3) shall not duplicate or increase an award for damages over the statutory limit allowed by state law or federal law existing on January 1, 2017, whichever is lower.

(E) An action based on employment discrimination in violation of this subdivision (f)(3) shall be brought within one (1) year of the occurrence of the alleged discrimination.

(F) An individual employee, agent of the employer, or employee of the agent of the employer is not liable for any violation of this subdivision (f)(3) that the employer is found to have committed.

(G) This amendment does not waive the sovereign immunity of the State of Arkansas.

(g) A person otherwise entitled to custody of, or visitation or parenting time with, a minor shall not be denied custody, visitation, or parenting time solely for conduct allowed under this amendment, nor shall there be:

(1) A finding of abuse solely for conduct allowed under this amendment; or

(2) A presumption of neglect or child endangerment for conduct allowed under this amendment.

(h) (1) A physician shall not be subject to arrest, prosecution, or penalty in any manner or denied any right or privilege, including without limitation a civil penalty or disciplinary action by the Arkansas State Medical Board or by any other business, occupational, or professional licensing board or bureau, solely for providing a written certification.

(2) Subdivision (g)(1) of this section does not prevent a professional licensing board from sanctioning a physician for failing to properly evaluate a patient's medical condition or for otherwise violating the applicable physician-patient standard of care.

(i) A person shall not be subject to arrest, prosecution, or penalty in any manner or denied any right or privilege, including without limitation a civil penalty or disciplinary action by a business, occupational, or professional licensing board or bureau, for providing a qualifying patient or designated caregiver with marijuana paraphernalia for purposes of facilitating the qualifying patient's medical use of marijuana.

(j) Any marijuana, marijuana paraphernalia, licit property, or interest in licit property, that is possessed, owned, or used exclusively in connection with the medical use of marijuana as allowed under this amendment, or property incidental to such use, shall not be seized or forfeited.

(k) A person shall not be subject to arrest, prosecution, or penalty in any manner or denied any right or privilege, including without limitation a civil penalty or disciplinary action by a business, occupational, or professional licensing board or bureau, simply for being in the presence or vicinity of the medical use of marijuana as allowed under this amendment or for directly assisting a physically disabled qualifying patient with the medical use of marijuana.

(l) (1) A registry identification card or its equivalent that is issued under the laws of another state, district, territory, commonwealth, or insular possession of the United States that allows a visiting qualifying patient to possess or use marijuana for medical use in the jurisdiction of issuance has the same force and effect when held by a visiting qualifying patient as a registry identification card issued by the Department of Health if the same qualifying medical condition exists.

(2) (A) A visiting qualifying patient may obtain marijuana from a dispensary upon producing evidence of his or her registry identification card or its equivalent that is issued under the laws of another state, district, territory, commonwealth, or insular possession of the United States.

(B) The department shall promulgate necessary rules concerning a visiting qualifying patient obtaining marijuana from a dispensary.

(m) A pharmacist shall not be subject to arrest, prosecution, or penalty in any manner or denied any right or privilege, including without limitation a civil penalty or disciplinary action by the Arkansas State Board of Pharmacy or by any other business, occupational, or

professional licensing board or bureau, solely for performing his or her duties as a pharmacist consultant for a registered dispensary.

[As added by Const. Amend. 98; Acts 2017, No. 593, § 3, No. 1024, § 1.]

§ 4. Qualifying patient -- Administration and enforcement -- Rules.

(a) (1) The Department of Health shall administer and enforce the provisions of this amendment concerning qualifying patients, qualifying medical conditions, and designated caregivers, including without limitation the issuance of a registry identification card to a qualifying patient and designated caregiver.

(2) The department shall adopt rules necessary to:

(A) Carry out the purposes of this amendment; and

(B) Perform its duties under this amendment.

(3) Rules adopted under this section are rules as defined in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(4) (A) The Department of Health shall require each applicant for a designated caregiver registry identification card to apply for or authorize the Department of Health to obtain state and national criminal background checks to be conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.

(B) The criminal background checks shall conform to the applicable federal standards and shall include the taking of fingerprints.

(C) The applicant shall authorize the release of the criminal background checks to the Department of Health and shall be responsible for the payment of any fee associated with the criminal background checks.

(D) Upon completion of the criminal background checks, the Identification Bureau of the Department of Arkansas State Police shall forward to the Department of Health all information obtained concerning the applicant.

(b) Not later than one hundred eighty (180) days after the effective date of this amendment, the department shall adopt rules governing:

(1) The manner in which the department considers applications for and renewals of registry identification cards;

(2) Labeling and testing standards for marijuana distributed to qualifying patients, including a warning label on all marijuana for medical use that is processed or sold for smoking that communicates the health and safety risks associated with smoking and a list of places and conditions in which smoking marijuana for medical use is illegal in the State of Arkansas; and

(3) Any other matters necessary for the department's fair, impartial, stringent, and comprehensive administration of this amendment.

(c) (1) Not later than one hundred eighty (180) days after the effective date of this amendment, the department shall adopt rules that govern the manner in which the department considers petitions from the public to add medical conditions or treatments to the list of qualifying medical conditions set forth in § 2 of this amendment.

(2) In considering a petition, the department shall add medical conditions or treatments to the list of qualifying medical conditions set forth in § 2 of this amendment if patients suffering from the medical conditions or undergoing the treatments in question would derive therapeutic benefit from the use of marijuana, taking into account the positive and negative health effects of such use.

(3) (A) The department shall, after hearing, approve or deny a petition within one hundred twenty (120) days of submission of the petition.

(B) The approval or denial of a petition constitutes final agency action, subject to judicial review, and jurisdiction for judicial review is vested in the Pulaski County Circuit Court.

(d) The department shall adopt rules within one hundred eighty (180) days of the effective date of this amendment that govern the manner in which a designated caregiver assists a physically disabled qualifying patient or a qualifying patient under the age of eighteen (18) with the medical use of marijuana.

(e) The department may collect fines or fees for any violation of a rule adopted under this section.

[As added by Const. Amend. 98; as amended by Acts 2017, No. 4, §§ 2 & 3, No. 545, § 1, No. 639, § 1, No. 740, § 2.]

§ 5. Registry identification cards.

(a) The Department of Health shall issue registry identification cards to qualifying patients and designated caregivers who submit in accordance with the rules promulgated by the department:

(1) Written certification issued by a physician within thirty (30) days of the application;

(2) (A) A reasonable application or renewal fee as established by the department by rule.

(B) The department may establish a sliding scale of application and renewal fees based upon a qualifying patient's family income;

(3) The name, address, and date of birth of the qualifying patient or designated caregiver, except that if the applicant is homeless, no address is required;

(4) For a designated caregiver application:

(A) The name of the physically disabled qualifying patient or qualifying patient under the age of eighteen (18) whom the applicant will be assisting; and

(B) Documentation from the qualifying patient's physician indicating that the qualifying patient is physically disabled or under the age of eighteen (18);

(5) The name, address, and telephone number of the qualifying patient's physician; and

(6) A signed statement from the qualifying patient or designated caregiver pledging not to divert marijuana to anyone who is not allowed to possess marijuana under this amendment.

(b) The department shall not issue a registry identification card to a qualifying patient who is under eighteen (18) years of age unless:

(1) The qualifying patient's physician has explained the potential risks and benefits of the medical use of marijuana to the qualifying patient and to a parent, guardian, or person having legal custody of the qualifying patient; and

(2) A parent, guardian, or person having legal custody:

(A) Consents in writing to:

(i) Allow the qualifying patient's medical use of marijuana;

(ii) Assist the qualifying patient in the medical use of marijuana; and

(iii) Control the acquisition of the marijuana, the dosage, and the frequency of the medical use of marijuana by the qualifying patient; and

(B) Registers as a designated caregiver under this amendment.

(c) (1) The department shall review the information contained in an application or renewal submitted under this section within fourteen (14) days of receiving it.

(2) The department shall deny an application or renewal if the:

(A) Applicant previously had a registry identification card revoked; or

(B) Department determines the written certification was not made in the context of a physician-patient relationship or that the written certification was fraudulently obtained.

(3) Rejection of an application or renewal is considered a final agency action, subject to judicial review, and jurisdiction is vested in the Pulaski County Circuit Court.

(d) (1) A registry identification card expires one (1) year after the date of issuance unless the physician states in the written certification that he or she believes the qualifying patient would benefit from the medical use of marijuana only until a specified earlier date.

(2) If the written certification specifies an earlier date, the registry identification card shall expire on that date.

(f) (1) An application or renewal and supporting information submitted by a qualifying patient or designated caregiver under this amendment, including without limitation information regarding the qualifying patient's physician, are considered confidential records that are exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq.

(2) (A) (i) The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards.

(ii) (a) The department may share information from the confidential list under this subsection with the Alcoholic Beverage Control Division and the Medical Marijuana Commission as necessary and the State Insurance Department for the purposes of the Arkansas all-payer claims database established under § 23-61-901 et seq.

(b) Confidential information shared with the division or commission shall remain confidential while in the division's or commission's possession.

(B) Individual names and other identifying information on the confidential list are confidential, exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq., and not subject to disclosure except to authorized employees of the department, division, and commission as necessary to perform official duties of the department, division, and commission.

(3) The department shall verify to law enforcement personnel whether a registry identification card is valid without disclosing more information than is reasonably necessary to verify the authenticity of the registry identification card.

(4) A person, including without limitation an employee or official of the department, division, commission, or another state agency or local government, who knowingly breaches the confidentiality of information obtained under this amendment commits a Class A misdemeanor.

(g) (1) Except as provided in § 3 of this amendment, a cardholder who transfers marijuana to a person who is not a qualifying patient or designated caregiver under this amendment shall have his or her registry identification card revoked and shall be subject to any other penalties established by law.

(2) The department may revoke the registry identification card of any cardholder who knowingly violates any provision of this amendment, and the cardholder is subject to any other penalties established by law.

(3) This subsection does not prohibit:

(A) A qualifying patient or designated caregiver from giving up to two and one-half ounces (2 1/2 oz.) of usable marijuana to another qualifying patient or designated caregiver as set forth in § 3 of this amendment; or

(B) The transfer of marijuana seedlings, plants, or usable marijuana as set forth in § 3 of this amendment.

(h) The department, division, and commission shall submit to the General Assembly an annual report that does not disclose any identifying information about cardholders or physicians but contains at a minimum:

(1) The number of applications and renewals filed for registry identification cards;

(2) The nature of the qualifying medical conditions of the qualifying patients;

(3) The number of registry identification cards revoked and the number of licenses to operate a dispensary and licenses to operate a cultivation facility revoked;

(4) The number of physicians providing written certifications for qualifying patients;

(5) The number of licensed dispensaries;

(6) The number of licensed cultivation facilities;

(7) The number of dispensary agents; and

(8) The number of cultivation facility agents.

[As added by Const. Amend. 98; as amended by Acts 2017, No. 5, § 2, No. 948, § 1.]

§ 6. Scope.

(a) This amendment does not permit a person to:

(1) Undertake any task under the influence of marijuana when doing so would constitute negligence or professional malpractice;

(2) Possess, smoke, or otherwise engage in the medical use of marijuana:

(A) On a school bus;

(B) On the grounds of a daycare center, preschool, primary or secondary school, college, or university;

(C) At a drug or alcohol treatment facility;

(D) At a community or recreation center;

(E) In a correctional facility;

(F) On any form of public transportation;

(G) In a public place; or

(H) On any property that is under control of the Arkansas National Guard or the United State military; or

(3) Operate, navigate, or be in actual physical control of a motor vehicle, aircraft, motorized watercraft, or any other vehicle drawn by power other than muscle power while under the influence of marijuana.

(4) Smoke marijuana:

(A) In a place where the smoking of tobacco is prohibited by law;

(B) In the presence of a person who is under fourteen (14) years of age;

(C) Inside a motor vehicle, aircraft, motorized watercraft, or any vehicle drawn by power other than muscle power;

(D) Knowingly in the presence of a pregnant woman; or

(E) In a place where the smoking of marijuana for medical use is likely to cause another person not authorized to use marijuana to be under the influence of marijuana; or

(5) Smoke marijuana for medical use if the person is under twenty-one (21) years of age.

(b) This amendment does not require:

(1) A government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana unless federal law requires reimbursement;

(2) An employer to accommodate the ingestion of marijuana in a workplace or an employee working while under the influence of marijuana;

(3) An individual or establishment in lawful possession of property to allow a guest, client, customer, or other visitor to use marijuana on or in that property;

(4) An individual or establishment in lawful possession of property to admit a guest, client, customer, or other visitor who is inebriated as a result of his or her medical use of marijuana;

(5) A landlord to permit a qualifying patient to smoke marijuana on or in leased property, except that a landlord may not prohibit the medical use of marijuana through means other than smoking on leased property by a qualifying patient; or

(6) A public school to permit a qualifying patient who is a student to be present on school grounds, to attend a school event, or to participate in extracurricular activities in violation of the public school's student discipline policies when a school office has a good faith belief that the behavior of the qualifying patient is impaired.

[As added by Const. Amend. 98; as amended by Acts 2017, No. 479, § 3, No. 740, § 1, No. 1099, § 1.]

§ 7. Affirmative defense and dismissal for medical use of marijuana.

(a) Except as provided in § 6 of this amendment and this section, an individual may assert a medical purpose for using marijuana as an affirmative defense to prosecution for an offense involving marijuana intended for the individual's medical use, and this defense shall be presumed valid and the prosecution shall be dismissed where the evidence demonstrates that the individual is:

(1) A qualifying patient or a designated caregiver; and

(2) In compliance with the conditions set forth in § 3 of this amendment.

(b) The defense and motion to dismiss shall not prevail if either of the following are proven:

(1) The individual's registry identification card had been revoked at the time of the

alleged offense; or

(2) The purposes for the possession of marijuana were not solely for medical use.

(c) An individual is not required to be in actual physical possession of a registry identification card to raise the affirmative defense set forth in this section.

(d) If an individual demonstrates a medical use of marijuana under this section, except as provided in § 6 of this amendment, the individual shall not be subject to the following:

(1) Disciplinary action by a business, occupational, or professional licensing board or bureau; or

(2) Forfeiture of any interest in or right to nonmarijuana, licit property. [As added by Const. Amend. 98.]

§ 8. Licensing of dispensaries and cultivation facilities.

(a) (1) Dispensaries and cultivation facilities shall be licensed by the Medical Marijuana Commission.

(2) The commission shall administer and regulate the licensing of dispensaries and cultivation facilities, including the issuance of a:

(i) License to operate a dispensary; and

(ii) License to operate a cultivation facility.

(3) The Alcoholic Beverage Control Division shall administer and enforce the provisions of this amendment concerning dispensaries and cultivation facilities.

(b) (1) The commission and division shall each adopt rules necessary to:

(A) Carry out the purposes of this amendment; and

(B) Perform its duties under this amendment.

(2) Rules adopted under this section are rules as defined in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(c) The following individuals associated with a dispensary or cultivation facility shall be current residents of Arkansas who have resided in the state for the previous seven (7) consecutive years:

(1) The individual(s) submitting an application to license a dispensary or cultivation facility; and,

(2) Sixty percent (60%) of the individuals owning an interest in a dispensary or cultivation facility.

(d) Not later than one hundred eighty (180) days after the effective date of this amendment, the commission shall adopt rules governing:

(1) The manner in which the commission considers applications for and renewals of licenses for dispensaries and cultivation facilities;

(2) The form and content of registration and renewal applications for dispensaries and cultivation facilities; and

(3) Any other matters necessary for the commission's fair, impartial, stringent, and comprehensive administration of its duties under this amendment.

(e) Not later than one hundred eighty (180) days after the effective date of this amendment, the division shall adopt rules governing:

(1) Oversight requirements for dispensaries and cultivation facilities;

(2) Recordkeeping requirements for dispensaries and cultivation facilities;

(3) Security requirements for dispensaries and cultivation facilities;

(4) Personnel requirements for dispensaries and cultivation facilities;

(5) The manufacture, processing, packaging, labeling, and dispensing of usable marijuana to qualifying patients and designated caregivers, including without limitation;

(A) Before sale, food or drink that has been combined with usable marijuana shall not exceed ten milligrams (10 mg) of active tetrahydrocannabinol per portion and shall be physically demarked; and

(B) If portions cannot be physically determined, the entirety of the food or drink that has been combined with usable marijuana shall not contain more than ten milligrams (10 mg) of active 31 tetrahydrocannabinol;

(6) Procedures for suspending or terminating the licenses of dispensaries and cultivation facilities that violate the provisions of this amendment or the rules adopted under this amendment, procedures for appealing penalties, and a schedule of penalties;

(7) Procedures for inspections and investigations of dispensaries and cultivation facilities;

(8) Advertising restrictions for dispensaries and cultivation facilities, including without limitation the advertising, marketing, packaging, and promotion of dispensaries and cultivation facilities with the purpose to avoid making the product of a dispensary or a cultivation facility appealing to children, including without limitation:

(A) Artwork;

(B) Building signage;

(C) Product design, including without limitation shapes and flavors;

(D) Child-proof packaging that cannot be opened by a child or that prevents ready access to toxic or harmful amount of the product, and that meets the testing

requirements in accordance with the method described in 16 C.F.R. § 1700.20, as existing on January 1, 2017;

(E) Indoor displays that can be seen from outside the dispensary or cultivation facility; and

(F) Other forms of marketing related to medical marijuana;

(9) Procedures for the disposal or other use of marijuana not dispensed to a qualifying patient; and

(10) Any other matters necessary for the division's fair, impartial, stringent, and comprehensive administration of its duties under this amendment.

(f) (1) Not later than one hundred eighty (180) days after the effective date of this amendment, the commission shall adopt rules establishing license application and license renewal fees for dispensary and cultivation facility licenses.

(2) (A) The initial dispensary application fee shall be a maximum of seven thousand five hundred dollars (\$7,500).

(B) The initial cultivation facility application fee shall be a maximum of fifteen thousand dollars (\$15,000).

(C) A license that is initially issued between January 1 and July 1 may have the licensing fees up to fifty percent (50%) prorated and refunded as determined by the commission.

(g) (1) Not later than July 1, 2017, the commission shall begin accepting applications for licenses to operate a dispensary and cultivation facility.

(2) The application shall include without limitation the following:

(A) The application fee;

(B) The legal name of the dispensary or cultivation facility;

(C) The physical address of the:

(i) Dispensary, the location of which may not be within one thousand five hundred feet (1,500') of a public or private school, church, or daycare center existing before the date of the dispensary application, which shall be calculated from the primary entrance of the dispensary to the nearest property boundary of a public or private school, church, or daycare center; or

(ii) Cultivation facility, the location of which may not be within three thousand feet (3,000') of a public or private school, church, or daycare center existing before the date of the cultivation facility application, which shall be calculated from the primary entrance of the cultivation facility to the nearest property boundary of a public or private school, church, or daycare center;

(D) The name, address, and date of birth of each dispensary agent or cultivation facility

agent; and

(E) If the city, town, or county in which the dispensary or cultivation facility would be located has enacted zoning restrictions, a sworn statement certifying that the dispensary or cultivation facility will operate in compliance with the restrictions.

(3) None of the owners, board members, or officers of the dispensary or cultivation facility:

(A) Shall have been convicted of an excluded felony offense;

(B) Shall have previously been an owner of a dispensary or cultivation facility that has had its license revoked; and

(C) Shall be under twenty-one (21) years of age.

(4) (A) The commission may issue a temporary license to a another natural person in conjunction with a dispensary or a cultivation facility when the natural person whose name is on the license for the dispensary or cultivation facility ceases to be in actual control of the dispensary or cultivation facility.

(B) The commission shall adopt rules as necessary to provide temporary licenses.

(h) The commission shall issue at least twenty (20) but no more than forty (40) dispensary licenses.

(i) There shall be no more than four (4) dispensaries in any one (1) county.

(j) The commission shall issue at least four (4) but no more than eight (8) cultivation facility licenses.

(k) (1) The commission shall conduct a criminal background check in order to carry out this section.

(2) The commission shall require each applicant for a dispensary license or cultivation facility license to apply for or authorize the commission to obtain state and national criminal background checks to be conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.

(3) The criminal background checks shall conform to the applicable federal standards and shall include the taking of fingerprints.

(4) The applicant shall authorize the release of the criminal background checks to the commission and shall be responsible for the payment of any fee associated with the criminal background checks.

(5) Upon completion of the criminal background checks, the Identification Bureau of the Department of Arkansas State Police shall forward to the commission all information obtained concerning the applicant.

(l) (1) No individual shall own an interest in more than:

(1) One (1) cultivation facility; and,

(2) One (1) dispensary.

(m) (1) (A) A dispensary licensed under this section may acquire, possess, manufacture, process, prepare, deliver, transfer, transport, supply, and dispense marijuana, marijuana paraphernalia, and related supplies and educational materials to a qualifying patient or designated caregiver, but shall not supply, possess, manufacture, deliver, transfer, or sell marijuana paraphernalia that requires the combustion of marijuana to be properly utilized, including pipes, water pipers, bongs, chillums, rolling papers, and roach clips.

(B) A dispensary licensed under this section shall:

(i) Make marijuana vaporizers available for sale to qualifying patients; and

(ii) Provide educational materials about medical marijuana methods of ingestion to qualifying patients and designated caregivers, including without limitation:

(a) Warnings on the potential health risks of smoking or combusting marijuana; and

(b) Information on potential health benefits of vaporizing marijuana compared to smoking or combusting.

(2) (A) A dispensary may receive compensation for providing the goods and services allowed by this section.

(B) A dispensary may contract with a transporter, distributor, or processor to extent of the license of the transporter, 1 distributor, or processor.

(3) (A) A dispensary may grow or possess:

(i) Fifty (50) mature marijuana plants at any one (1) time plus seedlings; and

(ii) All usable marijuana derived from the plants under subdivision (m)(3)(A)(i) of this section or predecessor plants.

(B) A dispensary may contract with a cultivation facility to cultivate one (1) or more mature marijuana plants the dispensary is permitted to grow.

(4) (A) (i) A cultivation facility may cultivate and possess usable marijuana in an amount reasonably necessary to meet the demand for and needs of qualifying patients as determined by the commission with the assistance of the Department of Health.

(ii) However, a cultivation facility shall not sell marijuana in any form except to a dispensary or other cultivation facility.

(B) A cultivation facility may also possess marijuana seeds.

(C) The commission with the assistance of the Department of Health shall promulgate rules determining the amount of marijuana reasonably necessary under subdivision (m)(4)(A) of this section.

(5) (A) A cultivation facility may receive compensation for providing the goods and services allowed by this section.

(B) A cultivation facility may contract with a transporter, distributor, or processor to extent of the license of the transporter, distributor, or processor.

(n) (1) A dispensary license and cultivation facility license shall expire on June 30 of each calendar 7 year and are renewable on or before June 30 of each calendar year for the 8 fiscal year beginning July 1.

(2) The commission shall issue a renewal dispensary license or a renewal cultivation facility license within ten (10) days to any entity who complies with the requirements contained in this amendment, including without limitation the payment of a renewal fee.

(o) The commission may charge a reasonable fee as established by rule for the issuance of a renewal license.

(p) The commission and the division may collect fines or fees for any violation of a rule adopted under this section.

(q) (1) A license for a dispensary or cultivation facility shall only be issued to a natural person.

(2) A license issued for a dispensary or cultivation facility shall be transferable only to a natural person upon approval of the commission.

(r) Data or records submitted to the division or commission under rules adopted under this amendment may be shared with the Department of Health and the State Insurance Department for purposes of the Arkansas all-payer claims database established under § 23-61-901 et seq.

(s) (1) A dispensary shall appoint a pharmacist consultant who is a pharmacist licensed with the Arkansas State Board of Pharmacy.

(2) A pharmacist consultant shall:

(A) Register as a dispensary agent under this amendment and follow all procedures;

(B) Develop and provide training to other dispensary agents at least one (1) time every twelve (12) months from the initial date of the opening of the dispensary on the following subjects:

(i) Guidelines for providing information to qualifying patients related to risks, benefits, and side effects associated with medical marijuana;

(ii) Recognizing the signs and symptoms of substance abuse; and

(iii) Guidelines for refusing to provide medical marijuana to an individual who appears to be impaired or abusing medical marijuana;

(A) Assist in the development and implementation of review and improvement processes for patient education and support provided by the dispensary;

(B) Provide oversight for the development and dissemination of:

(i) Education materials for qualifying patients and designated caregivers that include:

(a) Information about possible side effects and contraindications of medical marijuana;

(b) Guidelines for notifying the physician who provided the written certification for medical marijuana if side effects or contraindications occur;

(c) A description of the potential effects of differing strengths of medical marijuana strains and products;

(d) Information about potential drug-to-drug interactions, including interactions with alcohol, prescription drugs, nonprescription drugs, and supplements;

(e) Techniques for the use of medical marijuana and marijuana paraphernalia; and

(f) Information about different methods, forms, and routes of medical marijuana administration;

(i) Systems for documentation by a qualifying patient or designated caregiver of the symptoms of a qualifying patient that includes a logbook, rating scale for pain and symptoms, and guidelines for a patient's self-assessment; and

(ii) Policies and procedures for refusing to provide medical marijuana to an individual who appears to be impaired or abusing medical marijuana; and

(A) Be accessible by the dispensary or dispensary agent through:

(i) Telephonic means at all times during operating hours; and

(ii) Telephone or video conference for a patient consultation during operating hours.

(t) (1) A cultivation facility shall meet the following security requirements:

(A)(i) The physical security controls set forth in 21 C.F.R. § 1301.72 — 1301.74, as existing on January 1, 2017.

(ii) The Alcoholic Beverage Control Division of the Department of Finance and Administration shall adopt rules to implement subdivision (p)(1)(A)(i) of this section;

(B) All cultivation of marijuana occurs within a building, greenhouse, or other structure that:

(i) Has a complete roof enclosure supported by connecting walls that are constructed of solid material extending from the ground to the roof;

(ii) Is secure against unauthorized entry;

(iii) Has a foundation, slab, or equivalent base to which the floor is securely attached;

(iv) Meets performance standards ensuring that cultivation and processing activities cannot be and are not perceptible from the structure in terms of:

- (a)** Common visual observation;
- (b)** Odors, smell, fragrances, or other olfactory stimulus;
- (c)** Light pollution, glare, or brightness;
- (d)** Adequate ventilation to prevent mold; and
- (e)** Noise;
- (v)** Provides complete visual screening; and
- (vi)** Is accessible only through one (1) or more lockable doors;

(C) Current detailed plans and elevation drawings of all operational areas involved with the production of medical marijuana are maintained on the premises of the cultivation facility, including:

- (i)** All storage areas, ventilation systems, and equipment used for production;
- (ii)** All entrances and exits to the cultivation facility;
- (iii)** All windows, skylights, and retractable mechanisms built into the roof;
- (iv)** The location of all required security cameras;
- (v)** The location of all alarm inputs, detectors, and sirens;
- (vi)** All video and alarm system surveillance areas;
- (vii)** All production areas labeled according to the specific activity occurring within the area;
- (viii)** All restricted and limited access areas identified; and
- (ix)** All nonproduction areas labeled according to purpose;

(D) Access to areas where marijuana is grown, harvested, processed, and stored is limited to authorized personnel and:

- (i)** Designated by clearly marked signage; and
- (ii)** Locked and accessible only by authorized personnel on a current roster of authorized personnel;

(E)(i) Written policies regarding any nonregistered agent who may visit the premises and a log of all visitors to the premises are developed and maintained.

(ii) The log shall consist of the visitor's name, purpose of visit, time of arrival, and time of departure.

(iii) Visitors to a cultivation facility shall be:

(a) Issued a visitor identification tag containing the visitor's name that shall be worn for the duration of the visit on the premises; and

(b) Escorted by a cultivation facility agent at all times while present on the premises.

(iv)(a) However, contractors conducting repairs, maintenance, or other specific duties may be escorted to their work site and left unaccompanied while completing a job.

(b) Cultivation facility agents shall ensure that the contractor and area under repair are under video surveillance for the duration of the time spent on the premises by the contractor; and

(F) (i) An alarm system is equipped that upon attempted unauthorized entry, transmits a signal directly to a central protection company for a local or state police agency and a designated cultivation facility agent.

(ii) The alarm system shall:

(a) Provide coverage for all points of ingress and egress to the cultivation facility, including without limitation doorways, windows, loading bays, skylights, and retractable roof mechanisms;

(b) Provide coverage of any room with an exterior wall, any room containing a safe, and any room used to grow or store medical marijuana;

(c) Be equipped with a panic drive that upon activation will not only sound any audible alarm components but will also notify law enforcement;

(d) Have duress and hold up features to enable a cultivation facility agent to activate a silent alarm notifying law enforcement of an emergency;

(e) Be equipped with failure notification systems to notify cultivation facilities and law enforcement of any failure in the alarm system; and

(f) Have the ability to remain operational during a power outage.

(2) A cultivation facility shall maintain compliance with applicable city or county building or structure rules, regulations, or ordinances and any other applicable state laws or rules regarding buildings or structures.

[As added by Const. Amend. 98; as amended by Acts 2017, No. 4, §§ 4-6, No. 545, § 2, No. 587, § 1, No. 594, §§ 1-2, No. 639, § 2, No. 640, § 1, No. 641, § 1, No. 642, § 1, No. 948, § 2, No. 1023, § 3, No. 1024, §§ 2-3, No. 1100, § 1.]

§ 9. Registration and certification of cultivation facility agents and dispensary agents.

(a) (1) Cultivation facility agents and dispensary agents shall register with the Alcoholic Beverage Control Division.

(2) The division shall administer and enforce the provisions of this amendment concerning cultivation facility agents and dispensary agents, including without limitation the

issuance of a:

- (A)** Registry identification card to a dispensary agent; and
 - (B)** Registry identification card to a cultivation facility agent.
- (b) (1)** The division shall adopt rules necessary to:
 - (A)** Carry out the purposes of this amendment; and
 - (B)** Perform its duties under this amendment.
- (2)** Rules adopted under this section are rules as defined in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.
- (c)** Not later than one hundred eighty (180) days after the effective date of this amendment, the division shall adopt rules governing:
 - (1)** The manner in which the division considers applications for and renewals of registry identification cards for dispensary agents and cultivation facility agents;
 - (2)** The form and content of registration and renewal applications for dispensary agents and cultivation facility agents;
 - (3)** Procedures for suspending or terminating the registration of dispensary agents and cultivation facility agents who violate the provisions of this amendment or the rules adopted under this amendment, procedures for appealing penalties, and a schedule of penalties; and
 - (4)** Any other matters necessary for the division's fair, impartial, stringent, and comprehensive administration of its duties under this amendment.
- (d) (1)** The division shall conduct criminal background checks in order to carry out this section.
 - (2)** The division shall require each applicant for a dispensary agent license or cultivation facility agent license to apply for or authorize the division to obtain state and national criminal background checks to be conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.
 - (3)** The criminal background checks shall conform to the applicable federal standards and shall include the taking of fingerprints.
 - (4)** The applicant shall authorize the release of the criminal background checks to the division and shall be responsible for the payment of any fee associated with the criminal background checks.
 - (5)** Upon completion of the criminal background checks, the Identification Bureau of the Department of Arkansas State Police shall forward to the division all information obtained concerning the applicant.
- (e)** Except as provided herein, the division shall issue each dispensary agent and cultivation facility agent a registry identification card within ten (10) days of receipt of:

(1) The person's name, address, and date of birth under this amendment; and

(2) A reasonable fee in an amount established by rule of the division.

(f) (1) The division shall not issue a registry identification card to a dispensary agent or cultivation facility agent who has been convicted of an excluded felony offense.

(2) The division shall conduct a criminal background check as described in subsection (d) of this section of each dispensary agent or cultivation facility agent in order to carry out this provision.

(3) The division shall notify the dispensary or cultivation facility in writing of the reason for denying the registry identification card.

(g) (1) A registry identification card for a dispensary agent or cultivation facility agent shall expire on June 30 of each calendar year and is renewable on or before June 30 of each calendar year for the fiscal year beginning July 1.

(2) A registry identification card of a dispensary agent or cultivation facility agent expires upon notification to the division by a dispensary or cultivation facility that the person ceases to work at the dispensary or cultivation facility.

(h) The division may charge a reasonable fee as established by rule for the issuance of a new, renewal or replacement registry identification card.

(i) (1) The division may revoke the registry identification card of a dispensary agent or cultivation facility agent who knowingly violates any provision of this amendment, and the cardholder is subject to any other penalties established by law for the violation.

(2) The division may revoke or suspend the dispensary license or cultivation facility license of a dispensary or cultivation facility that the division determines knowingly aided or facilitated a violation of any provision of this amendment, and the licenseholder is subject to any other penalties established in law for the violation.

(j) The division may collect fines or fees for any violation of a rule adopted under this section.

[As added by Const. Amend. 98; as amended by Acts 2017, No. 4, § 7, No. 545, §§ 3-4, No. 594, § 3, No. 639, § 3.]

§ 10. Dispensary and cultivation facility inspections and requirements.

(a) Dispensaries and cultivation facilities are highly regulated by the state, and a dispensary and cultivation facility is therefore subject to reasonable inspection by the Alcoholic Beverage Control Division.

(b) (1) This subsection governs the operations of dispensaries and cultivation facilities.

(2) A dispensary and a cultivation facility shall be an entity incorporated in the State of Arkansas.

(3) A dispensary and cultivation facility shall implement appropriate security measures to deter and prevent unauthorized entrance into areas containing marijuana and the theft of

marijuana.

(4) A dispensary and cultivation facility shall have procedures in place to ensure accurate recordkeeping.

(5) Each dispensary shall keep the following records, dating back at least three (3) years:

(A) Records of the disposal of marijuana that is not distributed by the dispensary to qualifying patients; and

(B) A record of each transaction, including the amount of marijuana dispensed, the amount of compensation, and the registry identification number of the qualifying patient or designated caregiver.

(6) Each dispensary and cultivation facility shall:

(A) Conduct an initial comprehensive inventory of all marijuana, including without limitation usable marijuana available for dispensing, mature marijuana plants, and seedlings at each authorized location on the date the dispensary first dispenses usable marijuana or the cultivation facility first cultivates, prepares, manufactures, processes, or packages usable marijuana; and

(B) Conduct a biannual comprehensive inventory of all marijuana, including without limitation usable marijuana available for dispensing, mature marijuana plants, and seedlings at each authorized location.

(7) All cultivation of marijuana shall take place in an enclosed, locked facility.

(8) (A) A qualifying patient or designated caregiver acting on behalf of a qualifying patient shall not be dispensed more than a total of two and one-half ounces (2 1/2 oz.) of usable marijuana during a fourteen-day period.

(B) A dispensary or a dispensary agent may not dispense more than a total of two and one-half ounces (2 1/2 oz.) of usable marijuana to either a qualifying patient or designated caregiver acting on behalf of a qualifying patient during a fourteen-day period.

(C) Each time a dispensary agent dispenses usable marijuana to a qualifying patient or designated caregiver, he or she shall verify that the dispensing of usable marijuana would not cause the qualifying patient or designated caregiver to receive more usable marijuana than is permitted in a fourteen-day period.

(D) Each time usable marijuana is dispensed, the dispensary agent shall:

(i) Record the date the usable marijuana was dispensed and the amount dispensed; and

(ii) Notify the Department of Health in the manner required by the department.

(E) The department shall maintain a database that enables a dispensary to verify that dispensing usable marijuana to a qualifying patient or designated caregiver will not cause the qualifying patient or designated caregiver to exceed the amount allowed by law.

(F) All records shall be kept according to the registry identification number of the

qualifying patient or designated caregiver.

(G) It is the specific intent of this Amendment that no qualifying patient or designated caregiver acting on behalf of a qualifying patient be dispensed more than a total of two and one-half ounces (2 1/2 oz.) of usable marijuana during a fourteen-day period whether the usable marijuana is dispensed from one or any combination of dispensaries.

(9) The dispensary records with patient information shall be treated as confidential records that are exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq.

[As added by Const. Amend. 98; as amended by Acts 2017, No. 5, § 3.]

§ 11. Immunity for dispensaries and cultivation facilities.

(a) A dispensary, cultivation facility, transporter, distributor, or processor is not subject to the following:

(1) Prosecution for the acquisition, possession, cultivation, processing, preparation, manufacture, delivery, transfer, transport, sale, supply, or dispensing of marijuana and related supplies in accordance with the provisions of this amendment and any rule adopted under this amendment;

(2) Inspection, except under § 10 of this amendment or upon a search warrant issued by a court or judicial officer;

(3) Seizure of marijuana, except upon any order issued by a court or judicial officer and with due process of law; or

(4) Imposition of a penalty or denial of a right or privilege, including without limitation imposition of a civil penalty or disciplinary action by a business, occupational, or professional licensing board or entity, solely for acting in accordance with this amendment.

(b) (1) A dispensary agent, cultivation facility agent, transporter agent, distributor agent, or processor agent shall not be subject to arrest, prosecution, search, seizure, or penalty in any manner or denied any right or privilege, including without limitation civil penalty or disciplinary action by a business, occupational, or professional licensing board or entity, solely for working for or with a dispensary, cultivation facility, transporter, distributor, or processor to engage in acts permitted by this amendment.

(2) (A) A dispensary agent, cultivation facility agent, or processor agent may possess and manufacture marijuana at the dispensary, cultivation facility location, or processor location or locations for which the dispensary agent, cultivation facility agent, or processor agent is registered or when transferring marijuana under this section.

(B) (i) A dispensary agent who is a volunteer may possess and manufacture marijuana at a dispensary location.

(ii) A dispensary agent who is a volunteer may not dispense or transport marijuana.

(3) A cultivation facility and processor shall label the marijuana that is moved between the cultivation facility or processor and a dispensary, other cultivation facility, or processor with a trip ticket that identifies the cultivation facility by identification number, the time,

date, origin, and destination of the marijuana being transported, and the amount and form of marijuana that is being transported.

(4) A transporter agent or distributor agent may possess marijuana at any location while the transporter agent or distributor agent is transferring marijuana from a dispensary, cultivation facility, or processor to another dispensary, cultivation facility, or processor.

(c) Importation of seeds, cuttings, clones, or plants by a dispensary 29 or cultivation facility shall not be prosecuted in the courts of this state.

[As added by Const. Amend. 98; Acts 2017, No. 642, § 2. No. 1022, § 1.]

§ 12. Prohibitions for dispensaries.

(a) (1) Except as provided in § 3 of this amendment and subdivision (a)(2) of this section, a dispensary may not dispense, deliver, or otherwise transfer marijuana to a person other than a qualifying patient or designated caregiver.

(2) A dispensary may transfer marijuana to a transporter, distributor, or processor to operate to extent of the license of the transporter, distributor, or processor.

(b) (1) Except as provided in § 3 of this amendment, the Alcoholic Beverage Control Division shall immediately revoke the registry identification card of a dispensary agent who has dispensed, delivered, or otherwise transferred marijuana to a person other than a qualifying patient or designated caregiver, and that dispensary agent shall be disqualified from serving as a dispensary agent.

(2) A dispensary employing a dispensary agent found to violate subdivision (b)(1) of this section is not subject to penalties, including without limitation the revocation of its license, for the actions of a dispensary agent unless the dispensary knowingly aided or facilitated the violation.

[As added by Const. Amend. 98; Acts 2017, No. 642, § 2.]

§ 13. Prohibitions for cultivation facilities.

(a) A cultivation facility may sell marijuana plants, seeds, and usable marijuana only to a dispensary, other cultivation facility, or processor.

(b) A cultivation facility may employ a transporter or a distributor to transfer marijuana from the cultivation facility to a dispensary, other cultivation facility, or processor.

[As added by Const. Amend. 98; Acts 2017, No. 642, § 2.]

§ 14. Local regulation.

(a) This amendment does not prohibit a city, incorporated town, or county of this state from enacting reasonable zoning regulations applicable to dispensaries or cultivation facilities, provided that those zoning regulations are the same as those for a licensed retail pharmacy.

(b) This section does not allow a city, incorporated town, or county to prohibit the operation

of any dispensaries or cultivation facilities in the city, incorporated town, or county unless such a prohibition is approved at an election under Article 5, § 1, of this constitution.

[As added by Const. Amend. 98.]

§ 15. Prohibited conduct for physicians.

A physician shall not:

(1) Accept, solicit, or offer any form of pecuniary remuneration from or to a dispensary or cultivation facility provided however, that this does not prohibit a physician who is also a qualifying patient from purchasing usable marijuana from a dispensary;

(2) Offer a discount or other thing of value to a qualifying patient who uses or agrees to use a particular dispensary;

(3) Examine a patient for purposes of diagnosing a qualifying medical condition at a dispensary; or

(4) Hold an economic interest in a dispensary or cultivation facility if the physician certifies the qualifying medical condition of a patient for medical use of marijuana.

[As added by Const. Amend. 98.]

§ 16. Failure to adopt rules or issue registry identification cards or licenses.

If the Department of Health, Alcoholic Beverage Control Division, or Medical Marijuana Commission fails to adopt rules to implement this amendment within the time prescribed or fails to issue the minimum number of dispensary licenses or cultivation facility licenses, any person who would be a qualifying patient under this amendment may commence a mandamus action in Pulaski County Circuit Court to compel the department, division, or commission to perform the actions mandated under the provisions of this amendment.

[As added by Const. Amend. 98.]

§ 17. Taxation and distribution of proceeds.

(a) (1) The sale of usable marijuana is subject to all state and local sales taxes at the same rate as other tangible personal property.

(2) The sale of usable marijuana is also subject to the Arkansas Medical Marijuana Special Privilege Tax Act of 2017, Ark. Code § 26-57-1501 et seq., or its successor.

(b) The state sales and special privilege tax revenues received by the Department of Finance and Administration from the sale of usable marijuana under this amendment shall be distributed as follows:

(1) All moneys received as part of this amendment are designated as special revenue and the funds collected shall be deposited in the State Treasury and credited to the Arkansas Medical Marijuana Implementation and Operations Fund;

(2) All moneys received as part of this amendment prior to the effective date of this section shall be immediately transferred to the Arkansas Medical Marijuana Implementation and Operations Fund upon the effective date of this section;

(3) In order for the Chief Fiscal Officer of the State to determine the expenses that state agencies incurred due to the passage of this amendment, the following state entities shall submit a report to the Chief Fiscal Officer of the State no later than May 1 of each year of the projected expenses for the next fiscal year, including without limitation expenses as set out in subdivision (b)(4) of this section:

(A) The Alcoholic Beverage Control Division of the Department of Finance and Administration;

(B) The Department of Health;

(C) The Medical Marijuana Commission; and

(D) Any other state agency that incurs implementation, administration, or enforcement expenses related to this amendment; and

(4) (A) From time to time, the Chief Fiscal Officer of the State shall transfer on his or her books and those of the Treasurer of State and the Auditor of State the amounts as set out in subdivision (b)(3) of this section or so much as is available in proportion to the amount identified by each agency in subdivision (b)(3) of this section from the Arkansas Medical Marijuana Implementation and Operations Fund to the Miscellaneous Agencies Fund Account for the Alcoholic Beverage Control Division of the Department of Finance and Administration, the paying account as determined by the Chief Fiscal Officer for the Department of Health, the Medical Marijuana Commission Fund, and any other fund necessary to the implementation, administration, or enforcement of this amendment to pay for or reimburse personal services, operating expenses, professional fees, equipment, monitoring, auditing, and other miscellaneous expenses of this amendment.

(B) At the end of each fiscal year, any unobligated balances of the amounts transferred shall be deducted from the amount transferred in the next fiscal year as authorized in subdivision (b)(4)(A) of this section.

(C) Any unanticipated expenses or expenses over the amount transferred may be added from time to time to the transfer amount authorized in subdivision (b)(4)(A) of this section.

(D) The Department of Finance and Administration shall report at the end of the fiscal year to the Legislative Council or the Joint Budget Committee if during a legislative session the following information:

(i) The total annual amount received as a result of this amendment;

(ii) The amount transferred to each agency; and

(iii) Copies of the report submitted to the Chief Fiscal Officer of the State identifying estimated expenses as set out in subdivision (b)(3) of this section.

(c) After the transfer described in subsection (b) of this section, the amounts remaining in the Arkansas Medical Marijuana Implementation and Operations Fund shall be distributed

one hundred percent (100%) to the General Revenue Fund Account.

(d) An entity receiving a grant of state sales tax revenue under subsection (b) of this section may make one (1) or more successive grant applications for the same project or projects.

[As added by Const. Amend. 98; Acts 2017, No. 670, § 1, No. 1098, § 1.]

§ 18. Costs of administration and regulation of amendment.

(a) The following funds shall be used by the Department of Health to perform its duties under this amendment:

(1) State sales tax revenues received under § 17 of this amendment;

(2) (A) The revenue generated from fees, penalties, and other assessments of the department provided for by this amendment, including without limitation:

(i) Registry identification card application and renewal fees; and

(ii) Fees for replacement registry identification cards.

(B) Revenue generated from fees, penalties, and other assessments under this amendment shall be used solely for the performance of the department's duties under this amendment and shall be used for no other purpose;

(3) Private donations, if such funds are available; and

(4) Other appropriations by the General Assembly, if such funds are available.

(b) The following funds shall be used by the Alcoholic Beverage Control Division to perform its duties under this amendment:

(1) State sales tax revenues received under § 17 of this amendment;

(2) (A) The revenue generated from fees, penalties, and other assessments of the division provided for by this amendment.

(B) Revenue generated from fees, penalties, and other assessments of the division under this amendment shall be used solely for the performance of the division's duties under this amendment and shall be used for no other purpose;

(3) Private donations, if such funds are available; and

(4) Other appropriations by the General Assembly, if such funds are available.

(c) The following funds shall be used by the Medical Marijuana Commission to perform its duties under this amendment:

(1) State sales tax revenues received under § 17 of this amendment;

(2) The revenue generated from fees, penalties, and other assessments of the commission provided for by this amendment, including without limitation dispensary and

cultivation facility application fees, licensing fees, and renewal fees;

(3) Private donations, if such funds are available; and

(4) Other appropriations by the General Assembly, if such funds are available.

[As added by Const. Amend. 98.]

§ 19. Medical Marijuana Commission -- Creation.

(a) (1) There is created a Medical Marijuana Commission within the Department of Finance and Administration to determine the qualifications for receiving a license to operate a dispensary or a license to operate a cultivation facility and the awarding of licenses.

(2) Each member of the commission shall serve a term of four (4) years.

(3) The commission shall consist of five (5) members as follows:

(A) Two (2) members appointed by the President Pro Tempore of the Senate;

(B) Two (2) members appointed by the Speaker of the House of Representatives; and

(C) One (1) member appointed by the Governor.

(4) Vacancies on the commission shall be filled in the manner of the original appointment.

(5) The commission shall select one (1) of its members as chair.

(6) An affirmative vote of a majority of a quorum present shall be necessary to transact business.

(b) (1) (A) One (1) of the initial members appointed by the President Pro Tempore of the Senate shall serve a term of two (2) years and one (1) of the initial members appointed by the President Pro Tempore of the Senate shall serve a term of four (4) years.

(B) The initial members appointed by the President Pro Tempore of the Senate shall draw lots to determine which member shall serve a term of two (2) years.

(2) (A) One (1) of the initial members appointed by the Speaker of the House of Representatives shall serve a term of two (2) years and one (1) of the initial members appointed by the Speaker of the House of Representatives shall serve a term of four (4) years.

(B) The initial members appointed by the Speaker of the House of Representatives shall draw lots to determine which member shall serve a term of two (2) years.

(3) The initial member appointed by the Governor shall serve a term of four (4) years.

(4) All subsequent persons appointed to the commission shall serve a term of four (4) years.

(c) A member of the commission shall be:

(1) A citizen of the United States;

(2) A resident of the State of Arkansas for at least ten (10) years preceding his or her appointment;

(3) A qualified elector;

(4) At least twenty-five (25) years of age; and

(5) Have no economic interest in a dispensary or cultivation facility.

(d) (1) The commission, by a majority vote of the total membership of the commission cast during its first regularly scheduled meeting of each calendar year, may authorize payment to its members of a stipend not to exceed eighty-five dollars (\$85.00) per day for each meeting attended or for any day while performing any proper business of the commission.

(2) Members of the commission shall receive no other compensation, expense reimbursement, or in-lieu-of payments.

(e) (1) The commission may employ staff necessary to assist in the performance of its duties under this amendment.

(2) The Alcoholic Beverage Control Division shall provide staff for the commission if the commission does not have employees available for that purpose.

(f) (1) Initial members of the commission shall be appointed within thirty (30) days of the effective date of this section.

(2) The President Pro Tempore of the Senate shall call the first meeting of the commission, which shall occur within forty-five (45) days of the effective date of this section.

[As added by Const. Amend. 98 Acts 2017, No. 638, § 1.]

§ 20. No implied repeal.

(a) By adoption of this amendment, there is no implied repeal of the existing Arkansas laws criminalizing possession of marijuana for purposes not specified in this amendment.

(b) This amendment acknowledges that marijuana use, possession, and distribution for any purpose remains illegal under federal law.

[As added by Const. Amend. 98.]

§ 21. Limitation on growing.

This amendment:

(1) Authorizes the growing of marijuana at a dispensary or cultivation facility that is properly licensed with the state; and

(2) Does not authorize a qualifying patient, designated caregiver, or other person to grow marijuana.

[As added by Const. Amend. 98.]

§ 22. Severability.

If any provision or section of this amendment or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provisions or application of the amendment that can be given effect without the invalid provisions or applications, and to this end the provisions of this amendment are declared to be severable.

[As added by Const. Amend. 98.]

§ 23. Amendment by General Assembly.

(a) Except as provided in subsection (b) of this section, the General Assembly, in the same manner as required for amendment of laws initiated by the people, may amend the sections of this amendment so long as the amendments are germane to this section and consistent with its policy and purposes.

(b) The General Assembly shall not amend the following provisions of this amendment:

- (1)** Subsections (a), (b), and (c) of § 3;
- (2)** Subsection (h), (i), and (j) of § 8; and
- (3)** Section 23.

[As added by Const. Amend. 98.]

§ 24. Licensure for transporters, distributors, and processors.

(a) (1) The Medical Marijuana Commission shall license transporters, distributors, and processors.

(2) The Alcoholic Beverage Control Division shall administer and enforce the provisions of this section concerning transporters, distributors, and processors.

(b) The owners, board members, or officers of a transporter, distributor, or processor shall not:

- (1)** Have been convicted of an excluded felony offense;
- (2)** Have previously been an owner of a dispensary, cultivation facility, transporter, distributor, or processor that has had a license revoked; and
- (3)** Be under twenty-one (21) years of age.

(c) The commission may conduct a criminal records check in order to carry out this section.

(d) (1) A transporter license, distributor license, and processor license shall expire one (1) year after the date of issuance.

(2) The commission shall issue a renewal license within ten (10) days to any entity who complies with the requirements contained in this amendment, including without limitation the payment of a renewal fee.

(e) The commission may charge a reasonable fee as established by rule for the issuance of an initial license and a renewal license.

(f) (1) (A) A transporter or distributor licensed under this section may:

(i) Acquire, possess, deliver, transfer, transport, or distribute marijuana to a dispensary, cultivation facility, or processor; and

(ii) Receive compensation for providing services allowed by this section.

(B) A transporter or distributor licensed under this section shall not grow, manufacture, process, prepare, supply, or dispense marijuana.

(2) (A) A processor licensed under this section may:

(i) Acquire, possess, manufacture, process, prepare, deliver, transport, and supply marijuana to a dispensary or cultivation facility; and

(ii) Receive compensation for providing services allowed by this section.

(B) A processor licensed under this section shall not grow or dispense marijuana.

(g) The division may make reasonable inspections on a transporter, distributor, and processor to ensure that the transporter, distributor, and processor:

(1) Is an entity incorporated in the State of Arkansas;

(2) Has implemented appropriate security measures to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana;

(3) Conducts an initial comprehensive inventory of all marijuana and a biannual comprehensive inventory of all marijuana; and

(4) Records each transaction between the transporter, distributor, or processor and a dispensary, cultivation facility, or another processor and maintains the records for three (3) years;

(5) Has adopted procedures to ensure accurate recordkeeping.

(h) (1) The commission shall adopt rules governing the applications for a transporter license, distributor license, or processor license.

(2) The division shall adopt rules governing:

(A) Oversight requirements for transporters, distributors, and processors;

(B) Recordkeeping requirements for transporters, distributors, and processors;

- (C) Security requirements for transporters, distributors, and processors;
- (D) Personnel requirements for transporters, distributors, and processors;
- (E) The manufacture, processing, packaging, and dispensing of usable marijuana to qualifying patients and designated caregivers;
- (F) Procedures for suspending or terminating the licenses of transporters, distributors, and processors that violate the provisions of this amendment or the rules adopted under this amendment, procedures for appealing penalties, and a schedule of penalties;
- (G) Procedures for inspections and investigations of transporters, distributors, and processors;
- (H) Advertising restrictions for transporters, distributors, and processors; and
- (J) Any other matters necessary to the fair, impartial, stringent, and comprehensive administration of the duties of the division under this section.

[As added by Acts 2017; No. 642, § 2.]

§ 25. Registration and certification of transporter agents, distributor agents, and processor agents.

(a) The Alcoholic Beverage Control Division shall:

- (1) License transporter agents, distributor agents, and processor agents; and
 - (2) Administer and enforce the provisions of this section concerning transporter agents, distributor agents, and processor agents.
- (b) The division may conduct criminal records checks in order to carry out this section.
- (c) Except as prohibited by subdivision (d)(1) of this section, the division shall issue each transporter agent, distributor agent, and processor agent a registry identification card within ten (10) days of receipt of:
- (1) The person's name, address, and date of birth under this amendment; and
 - (2) A reasonable fee in an amount established by rule for the division.
- (d) (1) The division shall not issue a registry identification card to a transporter agent, distributor agent, or processor agent who has been convicted of an excluded felony offense.
- (2) The division may conduct a criminal background check of each transporter agent, distributor agent, and processor agent in order to carry out this provision.
- (3) The division shall notify the transporter, distributor, or processor in writing of the reason for denying the registry identification card.
- (e) (1) A registry identification card for a transporter agent, distributor agent, or processor agent shall expire one (1) year after the date of issuance.

(2) A registry identification card of a transporter agent, distributor agent, or processor agent expires upon notification to the division by a dispensary or cultivation facility that the person ceases to work at the transporter, distributor, or processor.

(f) The division may charge a reasonable fee as established by rule for the issuance of a new, renewal, or replacement registry identification card.

(g) (1) The division may revoke the registry identification card of a transporter agent, distributor agent, or processor agent who knowingly violates any provision of this amendment, and the cardholder is subject to any other penalties established by law for the violation.

(2) The division may revoke or suspend the transporter license, distributor license, or processor license of a transporter, distributor, or processor that the division determines knowingly aided or facilitated a violation of any provision of this amendment, and the cardholder is subject to any other penalties established in law for the violation.

(h) The division shall adopt rules governing:

(1) The manner in which the division considers applications for and renewals of registry identification cards for transporter agents, distributor agents, and processor agents;

(2) The form and content of registration and renewal applications for transporter agents, distributor agents, and processor agents;

(3) Procedures for suspending or terminating the registration of transporter agents, distributor agents, and processor agents who violate the provisions of this section or the rules adopted under this section, procedures for appealing penalties, and a schedule of penalties; and

(4) Any other matters necessary for the fair, impartial, stringent, and comprehensive administration of the duties of the division under this section.

[As added by Acts 2017; No. 642, § 2.]

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Exhibit B

**RULES AND REGULATIONS GOVERNING THE APPLICATION FOR,
ISSUANCE, AND RENEWAL OF LICENSES FOR MEDICAL
MARIJUANA CULTIVATION FACILITIES AND DISPENSARIES IN
ARKANSAS**

**SECTION I.
AUTHORITY OF THE COMMISSION**

These Rules and Regulations Governing the Application For, Issuance, and Renewal of Licenses for Medical Marijuana Cultivation Facilities and Dispensaries in Arkansas are duly adopted and promulgated by the Medical Marijuana Commission pursuant to Amendment No. 98 of the Constitution of the State of Arkansas of 1874, The Medical Marijuana Amendment of 2016.

**SECTION II.
SCOPE AND PURPOSE**

These rules govern the application procedures for the issuance and renewal of licenses for medical marijuana cultivation facilities and dispensaries in Arkansas. These rules also govern the selection methods to be used and the criteria to be considered by the Medical Marijuana Commission in awarding licenses for medical marijuana cultivation facilities and dispensaries.

**SECTION III.
DEFINITIONS**

- (1) “Amendment” means the Arkansas Medical Marijuana Act of 2016.

- (2) “Applicant” means the natural person in whose name a license would be issued and any entity: (a) the natural person represents; or (b) on whose behalf the application is being submitted.
- (3) “Commission” means the Medical Marijuana Commission.
- (4) “Cultivation facility” means an entity that:
 - a. Has been licensed by the Medical Marijuana Commission;
 - b. Cultivates, prepares, manufactures, processes, packages, sells to and delivers usable marijuana to a dispensary.
- (5) “Department” means the Arkansas Department of Health.
- (6) “Dispensary” means an entity that has been licensed by the Medical Marijuana Commission pursuant to the requirements of the Amendment.
- (7) “Felony” means:
 - (a) A felony offense as determined where the felony offense occurred;
 - (b) However, the following offenses shall not be considered a felony:
 - (i) An offense that has been sealed by a court or for which a pardon has been granted
 - (ii) An offense whose sentence, including any term of probation, incarceration or supervised release, was completed ten (10) or more years earlier
- (8) “Primary Entrance” means the entrance through which most people enter or exit a building.
- (9) “Qualifying medical condition” means one or more of the following:
 - a. Cancer, glaucoma, positive status for human immunodeficiency virus/acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Tourette’s syndrome, Crohn’s disease, ulcerative colitis, post-traumatic stress disorder, severe arthritis, fibromyalgia, Alzheimer’s disease, or the treatment of these conditions;

- b. A chronic or debilitating disease or medical condition or its treatment that produces one (1) or more of the following: cachexia or wasting syndrome; peripheral neuropathy; intractable pain, which is pain that has not responded to ordinary medications, treatment or surgical measures for more than six (6) months; severe nausea; seizures, including without limitation those characteristic of epilepsy; or severe and persistent muscle spasms, including, without limitation those characteristic of multiple sclerosis; and
 - c. Any other medical condition or its treatment approved by the Department pursuant to these Rules and the Amendment.
- (10) “School” means a facility or building operated by a public school district; open-enrollment public charter school, as defined in Ark. Code Ann. § 6-23-103; or a private entity including parochial schools providing preschool, elementary, or secondary education but does not include postsecondary institutions of higher education, community colleges, or the residences of students being home schooled under Ark. Code Ann. § 6-15-501 et. seq.
 - (11) “Sealed” means expunge, remove, sequester, and treat as confidential the record or records of a felony offense;
 - (12) “Usable marijuana” means the stalks, seeds, roots, dried leaves, flowers, oils, vapors, waxes, and other portions of the marijuana plant and any mixture or preparation thereof. Usable marijuana does not include the weight of any ingredients other than marijuana that are combined with marijuana and prepared for consumption as food and drink.

SECTION IV.
CULTIVATION FACILITY
APPLICATION, LICENSING, & RENEWAL

1. License Required

- a. No person or entity shall operate a medical marijuana cultivation facility unless the person has a license issued by the commission pursuant to these rules.
- b. Each license for a cultivation facility shall specify:
 - i. The name of the individual who holds the license;
 - ii. The address of the individual who holds the license;
 - iii. The effective dates of the license; and
 - iv. The address of the licensed facility.

2. Licenses Available

- a. The commission shall issue at least four (4), but no more than eight (8), cultivation facility licenses.
- b. It shall be within the commission's discretion to make licenses available.
- c. When it has been determined that new licenses are available or appropriate, the commission shall notify the public at large by legal notice that it will be accepting applications for a cultivation facility license.
- d. No individual shall have interest in more than one (1) Arkansas cultivation facility and one (1) Arkansas dispensary.

3. Application Process

- a. An application for a cultivation facility license shall be submitted to the commission on a form and in a manner prescribed by the commission.
- b. Applications will be accepted for the cultivation facility license beginning ten (10) days after the date of publication of the legal notice by the commission, and no applications will be accepted after ninety (90) days of the publication date.
- c. Applications that have been received and verified by the commission will be considered based upon the selection processes set out in **Section IV. 9.**
- d. Information and statements provided in an application shall become conditions of a license if the application is selected, and failure to satisfy the conditions will be cause for revocation or denial of renewal.

4. Minimum Qualifications for Applicant

- a. An individual applicant for a license under this chapter shall be a natural person that:
 - i. Is twenty-one (21) years of age or older;
 - ii. Is a current resident of the state of Arkansas and has been a resident for seven (7) consecutive years prior to the date of application;
 - iii. Has not previously held a license for a cultivation facility or dispensary that has been revoked;
 - iv. Has no ownership in any other cultivation facility in the state of Arkansas;
 - v. Has not been convicted of a felony offense;
 - vi. If possessing a professional license, that the license is in good standing; and
 - vii. Has no outstanding tax delinquencies owed to the State of Arkansas.
- b. If the applicant is applying on behalf of an entity, in addition to (a) of this Section, the individual applicant:
 - i. Shall be legally authorized to submit an application on behalf of the entity;
 - ii. Shall serve as the primary point of contact with the Commission;
 - iii. Shall submit sufficient proof that:
 - 1. The entity has no owner, board member, or officer under the age of twenty-one (21);
 - 2. Sixty percent (60%) of the equity ownership interests in the entity are held by individuals who have been residents of the state for at least seven (7) consecutive years prior to the application date;
 - 3. The entity has no owner, board member, or officer that has previously been an owner of a dispensary or cultivation facility that has had its license revoked;
 - 4. The entity has no owner, board member, or officer that has ownership in any other cultivation facility in the state of Arkansas;
 - 5. The entity has no owner, board member, or officer that has been convicted of a felony offense.
 - 6. If an owner, board member, or officer has or had a professional license, that the license is in good standing; and
 - 7. The entity has no owner, board member, or officer that owes delinquent taxes to the State of Arkansas.
- c. Applicants shall provide proof of assets or a surety bond in the amount

of \$1,000,000.00, and proof of at least \$500,000.00 in liquid assets.

i. If an applicant posts a surety bond, the bond shall be maintained until:

1. An applicant withdraws an application;
2. An applicant's application is denied by the commission; or
3. An applicant, following selection by the commission for a cultivation facility license, pays the licensing fee and posts the performance bond required in Section IV.10.a. and Section IV.10.c.

d. Applicants shall provide a complete application with responses for each required item.

5. Documentation and Information for Applicant

a. An individual applicant shall provide the following required information:

- i. Legal name;
- ii. Date of birth;
- iii. Legal residence;
- iv. Social security number or Tax Identification Number;
- v. Mailing address or principal residence address if different from the mailing address;
- vi. Phone number;
- vii. Email address; and
- viii. Statement of individual's authority to act on behalf of an entity, if applicable.

b. The following supporting documents shall be submitted at the time of application:

i. To establish legal name an applicant must present at least one (1) of the following source documents:

1. Certified copy of a birth certificate or marriage certificate filed with a state office of vital statistics or equivalent agency in the individual's state of birth or marriage;
2. Valid, unexpired U.S. passport or U.S. passport card;
3. Consular report of birth abroad Form FS-240, DS-1350 or FS-545 issued by the U.S. Commission of State;
4. Valid, unexpired permanent resident card (Form I-551) issued by the Commission of Homeland Security (DHS) or the U.S. Citizenship and Immigration Services (USCIS);

5. Unexpired employment authorization document issued by the Commission of Homeland Security, Form I-766 or Form I-688B;
 6. Unexpired foreign passport with the following: a valid, unexpired U.S. visa affixed, and an approved I-94 form documenting the applicant's most recent admittance into the United States or a Commission of Homeland Security admittance stamp on the passport;
 7. Certificate of naturalization issued by Commission of Homeland Security, Form N-550 or Form N-570;
 8. Certificate of citizenship, Form N-560 or Form N-561, issued by Commission of Homeland Security;
 9. Court-issued, certified copy of a divorce decree; or
 10. Certified copy of a legal change of name order.
- ii. To establish date of birth an applicant must present at least one (1) of the following source documents:
 1. At least one document included in clauses (1) through (10) of subparagraph (i) of this paragraph; and
 2. A photocopy of the individual's valid, unexpired driver's license or government issued photo identification card.
 - iii. To establish residency in the State of not less than seven (7) years preceding the application, an applicant must present at least two (2) of the following source documents:
 1. Arkansas tax return Form AR1000 for each of the seven years preceding the application without schedules, worksheets, or attachments, and redacted to remove all financial information and all but the last four digits of the individual's social security number;
 2. Evidence of voter registration for the seven years preceding the application;
 3. Ownership, lease, or rental documents for place of primary domicile for the seven (7) years preceding the application;
 4. Billing statements including utility bills for the seven (7) years preceding the application; or
 5. Vehicle registration for the seven (7) years preceding the application.
 - iv. To establish proof of no felony convictions or other disqualifying background information, an individual applicant shall provide consent to a background check, including fingerprinting; and
 - v. Individuals applying on behalf of an entity must also provide the

following proof:

1. Documentation of the ownership of the entity; and
 2. Documentation demonstrating that sixty percent (60%) of the equity ownership interests in the entity are held by individuals who have been residents of the state of Arkansas for seven (7) years prior to the application. Documentation sufficient to satisfy this requirement shall be the same as required of an individual in subsection (b)(iii);
 3. Documentation proving that each of the entity's owners, board members, and officers are over the age of twenty-one (21). Documentation sufficient to satisfy this requirement shall be the same as required of an individual in subsections (b)(i) and (b)(ii); and
 4. Consents for criminal background checks for each owner, board members, and officers of the entity.
- c. Applicants shall provide proof that the proposed location of the cultivation facility is at least three thousand (3,000) feet from a public or private school, church, or daycare existing before the date of the cultivation facility application pursuant to the Arkansas Medical Marijuana Amendment of 2016. The distance specified in this section shall be measured from the primary entrance to the cultivation facility to the nearest property line point of the school, church, or daycare facility;
- d. Applicants shall provide proof of authorization to occupy the property for the proposed cultivation facility. To establish proof the applicant shall provide one of the following:
- i. If the property is owned by the applicant, the applicant shall provide: confirmation of land ownership, identification of any mortgagees and perfected lienholders; and, if applicable, verification of notification to any mortgagees and perfected lien holders that the property is to be used as a medical marijuana cultivation facility, and consent thereto by any mortgagees and perfected lien holders;
 - ii. If the property is not owned, but is currently leased by the applicant, the applicant shall provide a copy of the lease; confirmation of land ownership, identification of any mortgagees and perfected lienholders; a written statement from the property owner or landlord, certifying consent that the applicant, if awarded a license, may operate a medical marijuana cultivation

- facility on the property, and, if applicable, verification of notification to any mortgagees and perfected lien holders that the property is to be used as a medical marijuana cultivation facility, and consent thereto by any mortgagees and perfected lien holders;
- iii. If the property is not owned or leased by the applicant, the applicant shall provide: a written statement from the property owner or landlord certifying consent that the applicant has the option to lease or purchase the property, contingent upon the issuance of a cultivation facility license; and if applicable, verification of notification by the property owner to any mortgagees and perfected lienholders that the property is to be used for a medical marijuana cultivation facility, and consent thereto by any mortgagees and perfected lienholders.
 - e. If the city, town, or county in which the cultivation facility would be located has enacted zoning restrictions, applicants shall submit a sworn statement certifying that the cultivation facility will operate in compliance with the restrictions.
 - f. The information and documents shall be submitted in a method prescribed by the commission in the notice of open application.

6. Background Checks

- a. The following are subject to background checks conducted by the commission or its designee in considering an application for a cultivation facility license:
 - i. The individual applicant;
 - ii. All owners, officers, and board members of an entity seeking to apply for a cultivation license through its designated individual applicant; and
 - iii. Agents of any of the above persons.
- b. A person subject to background checks as provided in subsection (a) shall be disqualified as an individual applicant, be prohibited from entering a cultivation facility, be prohibited from being an owner, officer or board member of a cultivation facility, and be prohibited from having any responsibility for operating a cultivation facility if the person has been convicted of a felony offense.
- c. Each person undergoing a background check shall provide written consent and all applicable processing fees to the commission or its designee to conduct the background check.

7. Application Fee

- a. Each application for a cultivation license shall include an application fee of \$15,000.00 by cash or certified funds. Certified checks or

cashier's checks shall be made payable to the state of Arkansas, delivered or mailed by certified mail, return receipt requested, to the address specified in the notice of open application.

- b. In the event an applicant is not successful in his or her application, \$7,500.00 of the initial application fee of shall be refunded to the applicant.
- c. An application is not complete and will not be considered unless all required information, documentation, and the application fee are timely received by the commission.

8. Verification of Application

- a. No later than ten (10) business days following the receipt of an application, the commission shall verify that the application and supporting documentation is complete, and the information submitted in the application is true and valid, and meets the requirements of **Section IV.4.** and **Section IV.5.**
- b. Applications that meet the requirements of **Section IV.4.** and **Section IV.5.** shall be placed into the pool of applicants for further review and selection based on merit, and the commission shall notify the applicant in writing that the application was successfully verified.
- c. Applications that do not meet the requirements of **Section IV.4.** and **Section IV.5.** shall be denied pursuant to **Section IV.12.** and the commission shall notify the applicant in writing.

9. Selection Process and Criteria Based on Merit Selection.

- a. In addition to documentation establishing minimum qualifications, the applicant shall submit responses to the commission's merit criteria in a form and manner prescribed by the commission. Criterion shall be published with the initial notice of open application.
- b. The commission shall consider the following criteria based on merit to evaluate applications verified pursuant to **Section IV.8.:**
 - i. Ability to operate a business, including but not limited to education, knowledge, and experience with:
 - 1. Regulated industries;
 - 2. Agriculture or horticulture;
 - 3. Commercial manufacturing;
 - 4. Creating and implementing a business plan, including a timeline for opening a business;
 - 5. Creating and implementing a financial plan;
 - 6. Secure inventory tracking and control;
 - 7. The cultivation and production of marijuana;

8. Owning or managing a business that required twenty-four hour security monitoring;
 9. Owning and managing a business that has not had its business license revoked; and
 10. Any other experience the applicant considers relevant.
- ii. Plan for operating a medical marijuana cultivation facility in compliance with applicable laws and regulations and demonstrating planning sufficient to prove the applicant's:
1. Ability to manufacture approved medical marijuana products, each with a consistent cannabinoid profile and each able to pass the required quality control testing as further described in the rules and regulations of the Arkansas Department of Health;
 2. Ability to produce sufficient quantities of approved medical marijuana products as necessary to meet the needs of individuals with qualifying medical conditions;
 3. Ability to comply with the security requirements as described in the rules and regulations of the Arkansas Alcoholic Beverage Control Division;
 4. Ability to comply with regulations of the Arkansas Department of Health and the Arkansas Alcoholic Beverage Control Division regarding the inventory and tracking of marijuana products;
 5. Ability to comply with the recordkeeping requirements of the Arkansas Department of Health and the Arkansas Alcoholic Beverage Control Division;
 6. Ability to maintain effective control against diversion of marijuana and marijuana products;
 7. Ability to comply with requirements for signage, packaging, labeling, and chain of custody of products;
 8. Ability to comply with requirements for the transportation and marketing of products.
 9. Ability to comply with all other laws and regulations regarding the operation of a medical marijuana cultivation facility.
- iii. Proof that the applicant is ready, willing, and able to properly carry out the activities of a medical marijuana cultivation facility, including a plan for operating a medical marijuana cultivation facility and a timeline for opening the cultivation facility and beginning production;

- iv. Proof of financial stability and access to financial resources, including but not limited to:
 - 1. Legal sources of finances immediately available to begin operating a cultivation facility;
 - 2. Possession of, or the right to use, sufficient real property, and equipment to properly carry on the activity described in the operating plan;
 - 3. A summary of financial statements in businesses previously or currently owned or operated by the applicant;
 - 4. A financial plan for operating a medical marijuana cultivation facility in Arkansas;
 - 5. Good credit history;
 - 6. No history of bankruptcy filings by the applicant or entities owned or operated by the applicant for eight (8) years prior to the date of application.
- c. The commission may consider the following criteria based on merit to evaluate applications verified pursuant to **Section IV.8.:**
 - i. Affiliation with a Medical Doctor, Doctor of Osteopathy, or Doctor of Pharmacy.
 - ii. Proof, if any, that the applicant's proposed cultivation facility will positively impact the economy and diversity of the area in which the facility is to be located.
 - 1. Economic impact shall be assessed using the Arkansas Economic Development Commission's tier-ranking of counties based on the following factors: poverty rate, population growth, per capita personal income, and unemployment rate. Consideration shall be given based on the AEDC's tier ranking of the county of the proposed cultivation facility as it exists on the date of the application.
 - 2. Factors that may be considered in determining an applicant's impact on the diversity of the area include, but are not limited to, ownership by minority groups, ownership by veterans, and ownership by women.
 - iii. Proof, if any, that the applicant's proposed cultivation facility will provide a benefit to the community in which the facility is to be located. Factors that may be considered include, but are not limited to:

1. Any proposed substance abuse plan to be implemented by the cultivation facility.
 2. Any proposed compassionate care plan to be implemented by the cultivation facility.
 3. Any proposed plan for research, education, and promotion of patient and public safety to be implemented by the cultivation facility.
 4. Local ownership percentage, meaning the percentage of ownership held by Arkansas residents.
- d. Each merit criterion will be worth a number of points announced by the commission in the notice of open application period.
 - e. A review panel comprised of members of the Medical Marijuana Commission shall evaluate the applications and award points for each merit criterion. The points shall be totaled for each application and the applications ranked from the highest total score to the lowest total score. The commission shall notify in writing each of the applicants of their respective score and their respective ranking among all applicants.
 - f. The highest ranking applicants, equal to the amount of available licenses, shall have the first opportunity to submit the required license fee and post the performance bond required under these rules for the available licenses. If any applicant fails to pay the fee and post the bond within the required period of time, then their application shall be denied for the appropriate reason under **Section IV.12.** of these rules. The commission shall then inform the next highest scoring applicant, and they shall have the opportunity to submit the required license fee and post the performance bond required under these rules for the available license.
 - g. The commission shall hold unselected applications in reserve to offer a license to the next highest scoring applicant if the highest scoring applicant fails to pay the licensing fee and post the performance bond in accordance with **Section IV.10.** When all available licenses within each application period have been issued, the commission shall remove all unselected applications from its list of reserved applications and notify all applicants; however, the commission shall have the option to maintain the list of reserved applications for 24 months from the issuance date of the initial licenses in any application period.
 - h. The commission may initiate the selection process for cultivation facilities upon determining that there are not enough cultivation facilities to supply the dispensaries within the state, or upon revocation of any existing license by the Alcoholic Beverage Control Division.

- i. If the commission determines that more licenses should be issued within 24 months following the issuance of licenses in the most recent application period, and it has exercised its option to maintain the reserve list from the last application period, the commission shall offer the next highest scoring applicant from the applications held in reserve the opportunity to pay the licensing fee and post the performance bond in accordance with **Section IV.10**.
- ii. If the commission determines more licenses should be issued, and the commission did not exercise the option to maintain a reserve list or the decision is made after the 24 months following the issuance of licenses in the most recent application period, the commission shall solicit new applications in accordance with these rules.
- i. If the commission must break a tie in scoring among applicants, the following procedure shall be followed:
 - i. Applicants with identical scores shall draw a number between one (1) and a number equal to the number of applicants with the identical score. Applicants will then repeat the drawing of numbers in the order determined by the first drawing. The tied applicants will be ranked according to the number pulled from the second drawing. The applicant who draws the number (1) will have the highest rank among the tied applicants.

10.Licensing Fee and Issuance of License

- a. Within seven (7) days of receiving written notice of selection from the commission, the selected applicant shall submit to the commission a cultivation facility license fee of \$100,000.00 in cash or certified funds. Any certified or cashier's check shall be made payable to the State of Arkansas.
- b. If the licensing fee is not timely paid, the selected applicant will be disqualified, and the commission shall select the next highest scoring applicant within the group of applications in accordance with **Section IV.9**.
- c. Within seven (7) days of receiving written notice of selection from the commission, the selected applicant shall submit to the commission a performance bond in the amount of \$500,000.00. The bond shall be maintained until the cultivation facility files its first required sales tax report with the Arkansas Department of Finance and Administration for the sale of usable marijuana.

- d. If the performance bond is not timely posted, the selected applicant will be disqualified, and the commission shall notify the next available applicant as determined by the merit selection process in **Section IV.9.**
- e. After the license fees and performance bond are timely tendered in an acceptable form, the applicant shall be awarded a license and a registration number.
- f. Upon issuance of a cultivation facility license, and following inspection required by Alcoholic Beverage Control Division Rules and Regulations, the cultivation facility licensee may begin operations.
- g. The cultivation facility licensee shall visibly post a copy of its license at the cultivation facility covered under the license.
- h. A license that is initially issued between Jan. 1 and July 1 may have the licensing fee prorated up to 50 percent of the total fee as determined by the commission.

11. Term

- a. A license shall expire on June 30 of each calendar year and is renewable on or before June 30 of each calendar year for the fiscal year beginning July 1, unless the license is:
 - i. Suspended or revoked by the division; or
 - ii. Surrendered by the cultivation facility licensee.
 - iii. Replaced with the issuance of a temporary license

12. Denial of Application for or Renewal of a License

- a. The commission may deny an application for or renewal of a license for any of the following reasons:
 - i. Failure to provide the information required in these rules;
 - ii. Failure to meet the requirements set forth in these rules or the rules of the Arkansas Department of Health or Arkansas Alcoholic Beverage Control Division;
 - iii. Provision of misleading, incorrect, false, or fraudulent information;
 - iv. Failure to pay all applicable fees as required;
 - v. Failure to post a performance bond naming the state as the secured party, as required by **Section IV.10.c.**;
 - vi. Receipt of an application evaluation score lower than the successful applicants for a cultivation facility in the pool period for which the applicant applied;
 - vii. An applicant, owner, board member, or officer has a background history that indicates the applicant does not have a reputable and responsible character or would pose a risk to the health, safety, or welfare of the public or qualifying patients; or

- viii. Any other ground that serves the purpose of these rules or the rules of the Arkansas Department of Health or Arkansas Alcoholic Beverage Control Division.
- b. If the commission denies an application for or renewal of a license, the commission shall notify the applicant in writing of the commission's decision, including the reason for the denial.
- c. A person aggrieved by a decision made pursuant to this section may appeal in accordance with this chapter.

13. License Renewal Process and Fee

- a. A license may be renewed if the cultivation facility licensee:
 - i. Submits to the commission a renewal application on a form and in a manner prescribed by the commission at least sixty (60) days prior to the expiration date on the license;
 - ii. Is in good standing with the Arkansas Secretary of State's office
 - iii. Continues to be in good standing with the Arkansas Department of Finance and Administration; and
 - iv. Continues to meet all the requirements set out in these rules or the rules of the Arkansas Department of Health or Arkansas Alcoholic Beverage Control Division.
- b. Before renewing a license, the commission may require further information and documentation and may conduct additional background checks to determine that the licensee continues to meet the requirements of these rules, the rules of the Arkansas Department of Health, or Arkansas Alcoholic Beverage Control Division.
- c. Within seven (7) days of receiving written notice from the commission that its renewal application has been approved, the cultivation facility licensee shall pay the annual renewal fee of \$100,000.00 in certified funds. Any certified or cashier's check shall be payable to the state of Arkansas.
- d. A cultivation facility licensee whose license is not renewed shall cease all operations immediately upon expiration of the license and return the license to the commission.
- e. Any marijuana or marijuana products remaining at the facility shall be destroyed or transferred pursuant to Arkansas Alcoholic Beverage Control Rules and Regulations.
- f. Upon the determination that a cultivation facility licensee has not met the requirements for renewal, the commission shall provide written notice by certified mail or personal delivery to the licensee. The notice shall provide an explanation for the denial of the renewal application.

The licensee may request a hearing before the Commission pursuant to **Section IV.19.b.** of these Rules.

14. Surrender of License

- a. A cultivation facility may voluntarily surrender a license to the commission at any time.
- b. If a cultivation facility voluntarily surrenders a license, the cultivation facility shall:
 - i. Return the license to the commission;
 - ii. Submit a report to the commission including the reason for surrendering the license; contact information following the close of business; the person or persons responsible for the close of the business; and where business records will be retained; and
 - iii. Any marijuana or marijuana products remaining at the facility shall be destroyed or transferred pursuant to Arkansas Alcoholic Beverage Control Rules and Regulations.
 - iv. No portion of the licensing fee shall be returned to the cultivation facility licensee if the license is voluntarily surrendered prior to the expiration of the license.

15. Change in Information

- a. The cultivation facility licensee shall notify the commission of any changes in contact information.
- b. The cultivation facility licensee shall notify the commission in writing no less than fourteen (14) days in advance of any change that may affect the licensee's qualifications for licensure, and submit to the commission supporting documentation to prove the cultivation facility licensee continues to be qualified. In the event of a change for which a cultivation facility licensee does not have prior notice, the licensee shall notify the commission immediately upon learning of the change.
- c. Pursuant to section (b), the licensee shall notify the commission of the following:
 - i. The arrest or conviction for any felony of any individual listed in an application or subsequently identified as an applicant, licensee or individual with a financial interest;
 - ii. Any alterations to the floor plan of the facility, including, but not limited to, any increase or decrease in the total footprint or production capacity of the facility.
 - iii. The filing of bankruptcy by the entity holding the license or by any of the entity's owners;
 - iv. The temporary closure of the business for any reason for longer than fifteen (15) days;

- v. The permanent closure of the business; and
- vi. Any other change that may affect the licensee's qualification for licensure.
- d. If the commission determines that the change has the potential to disqualify a licensee, the commission shall refer the matter to the Alcoholic Beverage Control Division for adjudication.

16. Transfer of License

- a. Licenses shall only be effective for the individuals identified in the original application.
- b. A licensee may not sell, transfer, or otherwise dispose of his or her license to another individual without approval from the commission.
- c. A licensee may only sell, transfer or otherwise dispose of his or her license to another natural person.
- d. An individual who holds a license through its individual agent shall not make any modification to the individual's ownership, board members, or officers as designated in the initial application without approval from the commission.
- e. A licensee's failure to obtain approval from the commission before engaging in ownership changes described in (b) and (c) above shall result in commission's revocation of that license.
- f. In order to obtain approval to transfer ownership of a license or of an entity that holds a license by its individual agent, principals in ownership, board members, or officers, the licensee shall submit to the commission an application for license transferal on a form and in a manner prescribed by the commission.
- g. If the commission denies an application for transfer of license, the commission shall provide written notice by certified mail or personal delivery to the licensee. The notice shall provide an explanation for the denial of the application. The licensee may request a hearing before the commission pursuant to **Section IV.19.b.** of this Rule.

17. Transfer of Location

- a. A cultivation facility license shall only be valid at the location for which it was originally issued by the commission.
- b. A licensee shall not re-locate a cultivation facility without prior approval by the commission.
- c. In order to obtain approval to transfer a cultivation facility license to another location, a licensee shall submit the following to the commission:
 - i. An application for license transferal on a form and in a manner prescribed by the commission;

- ii. Proof that the proposed location of the cultivation facility is at least three thousand (3,000) feet from a public or private school, church, or daycare existing before the date of the cultivation facility transfer application pursuant to the Arkansas Medical Marijuana Amendment of 2016. The distance specified in this section shall be measured from the primary entrance of the cultivation facility to the nearest property line point of the school, church, or daycare facility; and
- iii. The criteria set forth in **Section IV.9.b.ii.** of these Rules.
- d. If the commission denies an application for transfer of location, the commission shall provide written notice by certified mail or personal delivery to the licensee. The notice shall provide an explanation for the denial of the application. The licensee may request a hearing before the commission pursuant to **Section IV.19.b.** of these Rules.

18. Issuance of Temporary License

- a. The commission may issue a temporary license to another natural person in conjunction with a cultivation facility when the natural person applicant whose name is on the license of the cultivation facility ceases to be in actual control of the cultivation facility.
- b. A temporary license will be valid for no more than 60 days from the date of issuance.
- c. The issuance of a temporary license by the commission will immediately terminate the license which is to be replaced.
- d. The natural person to whom a temporary license is issued must meet the requirements of **Section IV.4, 5 & 6** of these rules.
- e. A temporary license can only be issued at the request of the natural person to whom a license was issued, that person's heirs, or the entity on whose behalf the individual applicant held the license.
- f. A temporary license cannot be transferred, sold or otherwise disposed of without the approval of the commission.
- g. A temporary license can be renewed in a manner consistent with a license to operate a cultivation facility under **Section IV.13** of these rules.

19. Appellate Procedure following Denial of Application for License, Renewal, Transfer of License, or Location.

- a. Denial of Application for License
 - i. If the commission denies an application for a cultivation license, the commission's decision may be appealed to the circuit court of the county in which the cultivation facility is situated or the Pulaski County Circuit Court. Appeals shall be governed by the

terms of the Arkansas Administrative Procedure Act, §25-15-201, et seq.

b. Denial of Application for Renewal of License, Transfer of License or Transfer of Location

- i. If the commission denies an application for the renewal of a cultivation facility license, the transfer of a license, or the transfer of the location for a license, the licensee may request a hearing before the Commission by filing a written request no later than fifteen (15) days from receipt of the notice of denial from the commission.
- ii. The commission shall conduct a hearing no later than sixty (60) days from the receipt of the request for hearing. The commission shall provide notice of the hearing to all interested parties, conduct the hearing, and issue a decision in accordance with the Arkansas Administrative Procedure Act, §25-15-201 et seq.
- iii. The commission's decision may be appealed to the circuit court of the county in which the cultivation facility is situated or the Pulaski County Circuit Court. Appeals shall be governed by the terms of the Arkansas Administrative Procedure Act, §25-15-201 et seq.

20. Hiring of Consultants

- a. The commission may retain the services of a contractor or consultant.
 - i. The selection of any contractor or consultant shall be conducted pursuant to the procurement laws of the State of Arkansas.
 - ii. The recommendations and findings of any contractor or consultant shall not be final and binding unless approved by a majority vote of the commission.

SECTION V.
DISPENSARY
APPLICATION, LICENSING, & RENEWAL

1. License Required

- a. No person shall operate a medical marijuana dispensary unless the person has a license issued by the commission pursuant to this chapter.
- b. Each license for a dispensary shall specify:
 - i. The name of the individual who holds the license;
 - ii. The address of the individual who holds the license;
 - iii. The effective dates of the license;
 - iv. The address of the licensed facility.

2. Licenses Available

- a. The commission shall issue at least twenty (20), but no more than forty (40), dispensary licenses.
- b. Licenses shall be distributed within eight (8) geographic zones, to assure that dispensaries are available throughout the state. A dispensary license shall only be valid in the geographic zone where it was awarded.
- c. It shall be within the commission's discretion to make licenses available.
- d. When it has been determined that new licenses are available or appropriate, the commission shall notify the public at large by legal notice that it will be accepting applications for a dispensary license.
- e. The commission will create application pools for dispensary licenses based on the eight (8) identified geographic zones to ensure that dispensaries are distributed equally through the state. A dispensary license will only be valid for the designated zone and cannot be used in another zone.
- f. No individual shall have interest in more than one (1) Arkansas cultivation facility and one (1) Arkansas dispensary.
- g. In accordance with the Arkansas Medical Marijuana Amendment of 2016, there shall be no more than four (4) dispensaries in any one (1) county.

3. Application

- a. An application for a dispensary license shall include both an individual applicant and an applying entity and they shall apply to the commission on a form and in a manner prescribed by the commission.
- b. Applications will be accepted for the dispensary license beginning ten (10) days after the date of publication of the legal notice by the

commission, and no applications will be accepted after ninety (90) days of the publication date.

- c. Information and statements provided in an application shall become conditions of a license if the application is selected, and failure to satisfy the conditions will be cause for revocation or denial of renewal.

4. Minimum Qualifications for Applicant

- a. An applicant for a license under this chapter shall be a natural person that:
 - i. Is twenty-one (21) years of age or older;
 - ii. Is a current resident of the state of Arkansas and has been a resident for seven (7) consecutive years prior to the date of application;
 - iii. Has not previously held a license for a cultivation facility or dispensary that has been revoked;
 - iv. Has no ownership in any other dispensary in the state of Arkansas;
 - v. Has not been convicted of a felony offense;
 - vi. If possessing a professional license, that the license is in good standing; and
 - vii. Has no outstanding tax delinquencies owed to the State of Arkansas.
- b. If the applicant is applying on behalf of an entity, in addition to (a) of this Section, the individual applicant:
 - i. Shall be legally authorized to submit an application on behalf of the entity;
 - ii. Shall serve as the primary point of contact with the commission;
 - iii. Shall submit sufficient proof that:
 - 1. The entity has no owner, board member, or officer under the age of twenty-one (21);
 - 2. Sixty percent (60%) of the equity ownership interests in the entity are held by individuals who have been residents of the state for at least seven (7) consecutive years prior to the application date;
 - 3. The entity has no owner, board member, or officer that has previously been an owner of a dispensary or cultivation facility that has had its license revoked;
 - 4. The entity has no owner, board member, or officer that has ownership in any other dispensary in the state of Arkansas;
 - 5. The entity has no owner, board member, or officer that has been convicted of a felony offense; and

6. If an owner, board member, or officer has or had a professional license, that the license is in good standing; and
 7. The entity has no owner, board member, or officer that owes delinquent taxes to the State of Arkansas.
 - c. Applicants shall provide proof of assets or a surety bond in the amount of \$200,000.00 and proof of at least \$100,000.00 in liquid assets.
 - i. If an applicant posts a surety bond, the bond shall be maintained until:
 1. An applicant withdraws an application;
 2. An applicant's application is denied by the commission; or
 3. An applicant, following selection by the commission for a dispensary license, pays the licensing fee and performance bond required in Section V.10.a. and Section V.10.c.
 - d. Applicants shall provide a complete application with responses for each required item.
5. Documentation and Information for Applicant
 - a. An individual applicant shall provide the following required information:
 - i. Legal name;
 - ii. Date of birth;
 - iii. Legal residence;
 - iv. Social security number;
 - v. Mailing address or principal residence address if different from the mailing address;
 - vi. Phone number;
 - vii. Email address; and
 - viii. Statement of individual's authority to act on behalf of an entity, if applicable.
 - b. The following supporting documents shall be submitted at the time of application:
 - i. To establish legal name an applicant must present at least one (1) of the following source documents:
 1. Certified copy of a birth certificate or marriage certificate filed with a state office of vital statistics or equivalent agency in the individual's state of birth or marriage;
 2. Valid, unexpired U.S. passport or U.S. passport card;
 3. Consular report of birth abroad Form FS-240, DS-1350 or FS-545 issued by the U.S. Commission of State;

4. Valid, unexpired permanent resident card (Form I-551) issued by the Commission of Homeland Security (DHS) or the U.S. Citizenship and Immigration Services (USCIS);
 5. Unexpired employment authorization document issued by the Commission of Homeland Security, Form I-766 or Form I-688B;
 6. Unexpired foreign passport with the following: a valid, unexpired U.S. visa affixed, and an approved I-94 form documenting the applicant's most recent admittance into the United States or a Commission of Homeland Security admittance stamp on the passport;
 7. Certificate of naturalization issued by Commission of Homeland Security, Form N-550 or Form N-570;
 8. Certificate of citizenship, Form N-560 or Form N-561, issued by Commission of Homeland Security;
 9. Court-issued, certified copy of a divorce decree; or
 10. Certified copy of a legal change of name order;
- ii. To establish date of birth an applicant must present at least one (1) of the following source documents:
 1. At least one document included in clauses (1) through (10) of subparagraph (i) of this paragraph; and
 2. A photocopy of the individual's valid, unexpired driver's license or government issued photo identification card.
 - iii. To establish residency in the State of not less than seven (7) years preceding the application, an applicant must present at least one (1) of the following source documents:
 1. Arkansas tax return Form AR1000 for each of the seven years preceding the application without schedules, worksheets, or attachments, and redacted to remove all financial information and all but the last four digits of the individual's social security number;
 2. Evidence of voter registration for the seven years preceding the application;
 3. Ownership, lease, or rental documents for place of primary domicile for the seven (7) years preceding the application;
 4. Billing statements including utility bills for the seven (7) years preceding the application; or
 5. Vehicle registration for the seven (7) years preceding the application.

- iv. To establish proof of no felony convictions or other disqualifying background information, an individual applicant shall provide consent to a background check, including fingerprinting; and
- v. Individuals applying on behalf of an entity must also provide the following proof:
 - 1. Documentation of the ownership of the entity; and
 - 2. Documentation demonstrating that sixty percent (60%) of the equity ownership interests in the entity are held by individuals who have been residents of the state of Arkansas for seven (7) years prior to the application. Documentation sufficient to satisfy this requirement shall be the same as required of an individual in subsection (b)(iii);
 - 3. Board members, and officers are over the age of twenty-one (21). Documentation sufficient to satisfy this requirement shall be the same as required of an individual in subsections (b) and (c); and
 - 4. Consents for criminal background checks for each owner, board members, and officers of the entity.
- c. Applicants shall provide proof that the proposed location of the dispensary is at least one thousand five hundred (1,500) feet from a public or private school, church, or daycare existing before the date of the dispensary application pursuant to the Arkansas Medical Marijuana Amendment of 2016. The distance specified in this section shall be measured from the primary entrance of the dispensary to the nearest property line point of the school, church, or daycare facility; and
- d. Applicants shall provide proof of authorization to occupy the property for the proposed dispensary. To establish proof the applicant shall provide one of the following:
 - i. If the property is owned by the applicant, the applicant shall provide: confirmation of land ownership, identification of any mortgagees and perfected lienholders; and, if applicable, verification of notification to any mortgagees and perfected lien holders that the property is to be used as a medical marijuana dispensary, and consent thereto by any mortgagees and perfected lien holders;
 - ii. If the property is not owned, but is currently leased by the applicant, the applicant shall provide a copy of the lease; confirmation of land ownership, identification of any

mortgagees and perfected lienholders; a written statement from the property owner or landlord, certifying consent that the applicant, if awarded a license, may operate a medical marijuana dispensary on the property, and, if applicable, verification of notification to any mortgagees and perfected lien holders that the property is to be used as a medical marijuana dispensary, and consent thereto by any mortgagees and perfected lien holders;

iii. If the property is not owned or leased by the applicant, the applicant shall provide: a written statement from the property owner or landlord certifying consent that the applicant has the option to lease or purchase the property, contingent upon the issuance of a dispensary license; and if applicable, verification of notification by the property owner to any mortgagees and perfected lienholders that the property is to be used for a medical marijuana dispensary, and consent thereto by any mortgagees and perfected lienholders.

e. If the city, town, or county in which the dispensary would be located has enacted zoning restrictions, applicants shall submit a sworn statement certifying that the dispensary will operate in compliance with the restrictions.

f. The information and documents shall be submitted in a method prescribed by the commission in the notice of open application.

6. Background Checks

a. The following are subject to background checks conducted by the commission or its designee in considering an application for a dispensary license:

i. The individual applicant;

ii. All owners, officers, and board members of an entity seeking to apply for a dispensary license through its designated individual applicant; and

iii. Agents of any of the above persons.

b. Each person undergoing a background check shall provide written consent and all applicable processing fees to the commission or its designee to conduct the background check.

7. Application Fee

a. Each application for a dispensary license shall include an application fee of \$7,500.00 in cash or certified funds. Any certified check or cashier's check shall be made payable to state of Arkansas, and

delivered or mailed by certified mail, return receipt requested, to the address specified in the notice of open application.

- b. In the event an applicant is not successful in his or her application, \$3,750.00 of the initial application fee shall be refunded to the applicant.
- c. An application is not complete and will not be considered unless the application fee is received with the application by the deadline.

8. Verification of Application

- a. After receipt of an application, the commission shall verify that the application and supporting documentation is complete, and the information submitted in the application is true and valid.
- b. Applications that meet the requirements of **Section V.4. and V.5** shall be placed into the pool of applicants for further review and selection based on merit. The commission shall notify the applicant in writing that the application was successfully verified.
- c. Applications that do not meet the requirements of **Section V.4. and Section V.5** shall be denied pursuant to **Section V.12**, and the commission shall notify the applicant in writing.

9. Selection Process and Criteria Based on Merit Selection

- a. In addition to documentation establishing minimum qualifications, the applicant shall submit responses to the commission's merit criteria in a form and manner prescribed by the commission. Criterion shall be published with the initial notice of application.
- b. The commission shall consider the following criteria based on merit to evaluate applications verified pursuant to **Section V.8**:
 - i. Ability to operate a business, including, but not limited to education, knowledge, and experience with:
 - 1. Regulated industries;
 - 2. Agriculture or horticulture;
 - 3. Commercial manufacturing;
 - 4. Creating and implementing a business plan, including a timeline for opening a business;
 - 5. Creating and implementing a financial plan;
 - 6. Secure inventory tracking and control;
 - 7. The cultivation and production of marijuana;
 - 8. Owning or managing a business that required twenty-four hour security monitoring;
 - 9. Owning and managing a business that has not had its business license revoked; and

10. Any other experience the applicant considers relevant.
- ii. Plan for operating a dispensary in compliance with applicable laws and regulations and demonstrating planning sufficient to prove the applicant's:
 1. Ability to manufacture approved medical marijuana products, each with a consistent cannabinoid profile and each able to pass the required quality control testing as further described in the rules and regulations of the Arkansas Department of Health;
 2. Ability to produce sufficient quantities of approved medical marijuana products as necessary to meet the needs of individuals with qualifying medical conditions;
 3. Ability to comply with the security requirements as described in the rules and regulations of the Arkansas Alcoholic Beverage Control Division.
 4. Ability to comply with regulations of the Arkansas Department of Health and the Arkansas Alcoholic Beverage Control Division regarding the inventory and tracking of marijuana products;
 5. Ability to comply with the recordkeeping requirements of Arkansas Department of Health and the Arkansas Alcoholic Beverage Control Division;
 6. Ability to maintain effective control against diversion of marijuana and marijuana products;
 7. Ability to comply with requirements for signage, packaging, labeling, and chain of custody of products; and
 8. Ability to comply with all other laws and regulations regarding the operation of a medical marijuana dispensary.
 - iii. Proof that the applicant is ready, willing, and able to properly carry out the activities of a medical marijuana dispensary, including a plan for operating a medical marijuana dispensary and a timeline for opening the dispensary;
 - iv. Proof of financial stability and access to financial resources, including but not limited to:
 1. Legal sources of finances immediately available to begin operating a dispensary;
 2. Possession of, or the right to use, sufficient real property, and equipment to properly carry on the activity described in the operating plan;

3. A summary of financial statements in businesses previously or currently owned or operated by the applicant;
 4. A financial plan for operating a medical marijuana dispensary in Arkansas;
 5. Good credit history;
 6. No history of bankruptcy filings by the applicant or entities owned or operated by the applicant for eight (8) years prior to the date of application.
- c. The commission may consider the following criteria based on merit to evaluate applications verified pursuant to **Section V.8**:
- i. Affiliation with a Medical Doctor, Doctor of Osteopathy, or Doctor of Pharmacy.
 - ii. Proof, if any, that the applicant's proposed dispensary will positively impact the economy and diversity of the area in which the dispensary is to be located.
 1. Economic impact shall be assessed using the Arkansas Economic Development Commission's tier-ranking of counties based on the following factors: poverty rate, population growth, per capita personal income, and unemployment rate. Consideration shall be given based on the AEDC's tier ranking of the county of the proposed dispensary as it exists on the date of the application.
 2. Factors that may be considered in determining an applicant's impact on the diversity of the area include, but are not limited to, ownership by minority groups, ownership by veterans, and ownership by women.
 - iii. Proof, if any, that the applicant's proposed dispensary will provide a benefit to the community in which the facility is to be located. Factors that may be considered include, but are not limited to:
 1. Any proposed substance abuse plan to be implemented by the dispensary.
 2. Any proposed compassionate care plan to be implemented by the dispensary.
 3. Any proposed plan for research, education, and promotion of patient and public safety to be implemented by the dispensary.
 4. Local ownership percentage, meaning the percentage of ownership held by Arkansas residents.

- d. Each merit criterion will be worth a number of points announced by the commission in the notice of open application period.
- e. A review panel comprised of members of the Medical Marijuana Commission shall evaluate the applications and award points for each merit criterion. The points shall be totaled for each application and the applications ranked from the highest total score to the lowest total score within each geographic zone. The commission shall notify in writing each of the applicants of their respective score and their respective ranking among all applicants within the applicable geographic zone.
- f. The highest ranking applicants in each zone, equal to the amount of available licenses in each zone, shall have the first opportunity to submit the required license fee and post the performance bond required under these rules for the available licenses. If any applicant fails to pay the fee and post the bond within the required period of time, then their application shall be denied for the appropriate reason under **Section V.12.** of these rules. The commission shall then inform the next highest scoring applicant within the applicable zone, and they shall have the opportunity to submit the required license fee and post the performance bond required under these rules for the available license.
- g. The commission shall hold unselected applications in reserve to offer a license to the next highest scoring applicant within a zone if the highest scoring applicant within that zone fails to pay the licensing fee and post the performance bond in accordance with **Section V.10.** Unselected applications shall remain in reserve for 24 months from the issuance date of the initial licenses in any application period.
- h. The commission may initiate the selection process for dispensary licenses upon determining that there are not enough dispensaries to supply qualified patients within the state-, or upon revocation of any existing license by the Alcoholic Beverage Control Division.
 - i. If the commission determines that more licenses should be issued within 24 months following the issuance of licenses in the most recent application period, the commission shall offer the opportunity to pay the licensing fee and post the performance bond in accordance with **Section V.10** to the next highest scoring applicant from the applications held in reserve for the zone where the commission has determined a need for the license.
 - ii. If the commission determines that more licenses should be issued after the 24 months following the issuance of licenses in the most recent application period, the commission shall solicit new applications in accordance with these rules.

- i. If the commission must break a tie in scoring among applicants, the following procedure shall be followed:
 - i. Applicants with identical scores shall draw a number between one (1) and a number equal to the number of applicants with the identical score. Applicants will then repeat the drawing of numbers in the order determined by the first drawing. The tied applicants will be ranked according to the number pulled from the second drawing. The applicant who draws the number (1) will have the highest rank among the tied applicants.

10. Licensing Fee and Issuance of License

- a. Within seven (7) days of receiving written notice of selection from the commission, the selected applicant for a dispensary license shall submit to the commission a dispensary license fee of \$15,000.00 in cash or certified funds. Any certified or cashier's check shall be made payable to the State of Arkansas.
- b. If the licensing fee is not timely paid, the selected applicant will be disqualified, and the commission shall select the next highest scoring applicant within that particular zone.
- c. Within seven (7) days of receiving written notice of selection from the commission, the selected applicant shall submit to the commission a performance bond in the amount of \$100,000.00. The bond shall be maintained until the dispensary files its first application for renewal of the license.
- d. If the performance bond is not timely posted, the selected applicant will be disqualified, and the commission shall select the next highest scoring applicant within that particular zone.
- e. A license that is initially issued between Jan. 1 and July 1 may have the licensing fee prorated up to 50 percent of the total fee as determined by the commission.
- f. Upon issuance of a dispensary license, and following inspection required by Alcoholic Beverage Control Division Rules and Regulations, the dispensary licensee may begin operations.
- g. The dispensary licensee shall visibly post a copy of its license at the dispensary covered under the license.

11. Term

- a. A license shall expire on June 30 of each calendar year and is renewable on or before June 30 of each calendar year for the fiscal year beginning July 1, unless the license is:

- i. Suspended or revoked by the Department of Finance and Administration – Alcoholic Beverage Control Division;
- ii. Surrendered by the dispensary licensee; or
- iii. Replaced by a temporary license.

12. Denial of Application for or Renewal of a License

- a. The commission may deny an application for or renewal of a license for any of the following reasons:
 - i. Failure to provide the information required in these rules;
 - ii. Failure to meet the requirements set forth in these rules or the rules of the Arkansas Department of Health or Arkansas Alcoholic Beverage Control Division;
 - iii. Provision of misleading, incorrect, false, or fraudulent information;
 - iv. Failure to pay all applicable fees as required;
 - v. Failure to post performance bond, if required, naming the state as a secured party;
 - vi. An applicant has a background history that indicates the applicant does not have a reputable and responsible character or would pose a risk to the health, safety, or welfare of the public or qualifying patients; or
 - vii. Any other ground that serves the purpose of these rules or the rules of the Arkansas Department of Health or Arkansas Alcoholic Beverage Control Division.
- b. If the commission denies an application for or renewal of a license, the commission shall notify the applicant in writing of the commission's decision, including the reason for the denial.
- c. A person aggrieved by a decision made pursuant to this section may appeal in accordance with this chapter.

13. License Renewal Process and Fee

- a. A license may be renewed if the dispensary licensee:
 - i. Submits to the commission a renewal application on a form and in a manner prescribed by the commission at least sixty (60) days prior to the expiration date on the license;
 - ii. Is in good standing with the Arkansas Secretary of State's office;
 - iii. Continues to be in good standing with the Arkansas Department of Finance and Administration; and
 - iv. Continues to meet all the requirements set out in these rules or the rules of the Arkansas Department of Health or Arkansas Alcoholic Beverage Control Division.

- b. Before renewing a license, the commission may require further information and documentation and may conduct additional background checks to determine that the licensee continues to meet the requirements set out in these rules or the rules of the Arkansas Department of Health or Arkansas Alcoholic Beverage Control Division.
- c. After receiving written notice from the commission that its renewal application has been approved, the dispensary licensee shall pay the annual renewal fee of \$22,500.00 in certified funds. Any certified or cashier's check shall be payable to the State of Arkansas.
- d. A dispensary licensee whose license is not renewed shall cease all operations immediately upon expiration of the license, return the license to the commission; and
- e. Any marijuana or marijuana products remaining at the facility shall be destroyed or transferred pursuant to Arkansas Alcoholic Beverage Control Rules and Regulations.

14. Surrender of License

- a. A dispensary may voluntarily surrender a license to the commission at any time.
- b. If a dispensary voluntarily surrenders a license, the dispensary shall:
 - i. Return the license to the commission;
 - ii. Submit a report to the commission including the reason for surrendering the license; contact information following the close of business; the person or persons responsible for the close of the business; and where business records will be retained; and
 - iii. Tender all marijuana and marijuana products for destruction or for sale to another facility in accordance with the Arkansas Department of Finance and Administration – Alcoholic Beverage Control Division. No portion of the licensing fee shall be returned to the dispensary licensee if the license is voluntarily surrendered prior to the expiration of the license.

15. Change in Information

- a. The dispensary licensee shall notify the commission of any changes in contact information.
- b. The dispensary licensee shall notify the commission in writing no less than fourteen (14) days in advance of any change that may affect the licensee's qualifications for licensure, and submit to the commission supporting documentation to prove the dispensary licensee continues to be qualified. In the event of a change for which a dispensary licensee

does not have prior notice, the licensee shall notify the commission immediately upon learning of the change.

- c. Pursuant to section (b), the licensee shall notify the commission of the following:
 - i. The arrest or conviction for any felony of any individual listed in an application or subsequently identified as an applicant, licensee or individual with a financial interest;
 - ii. Any alterations to the floor plan of the facility, including, but not limited to, any increase or decrease in the total footprint or production capacity of the facility.
 - iii. The filing of bankruptcy by the entity holding the license or by any of the entity's owners;
 - iv. The temporary closure of the business for any reason for longer than fifteen (15) days;
 - v. The permanent closure of the business;
 - vi. Any other change that may affect the licensee's qualification for licensure.
- d. If the Commission determines that the change has the potential to disqualify a licensee, the Commission shall refer the matter to the Alcoholic Beverage Control Division for adjudication.

16. License Restrictions

- a. The dispensary license shall only be applicable for use in the geographic zone for which it is issued. A dispensary being operated outside of its designated area will result in the dispensary's license being revoked.

17. Transfer of License

- a. Licenses shall only be effective for the individuals identified in the original application.
- b. A licensee may not sell, transfer, or otherwise dispose of his or her license to another individual without approval from the commission.
- c. A licensee may only sell, transfer or otherwise dispose of her license to a natural person.
- d. An entity that holds a license through its individual agent shall not make any modification to the entity's ownership, board members, or officers as designated in the initial application without approval from the commission.
- e. A licensee's failure to obtain approval from the commission before engaging in ownership changes described in (b) and (c) above shall result in the commission's revocation of that license.

- f. In order to obtain approval to transfer ownership of a license or of an entity that holds a license by its individual agent, principals in ownership, board members, or officers, the licensee shall submit to the commission an application for license transferal on a form and in a manner prescribed by the commission.
- g. If the commission denies an application for transfer of license, the commission shall provide written notice by certified mail or personal delivery to the licensee. The notice shall provide an explanation for the denial of the application. The licensee may request a hearing before the Commission pursuant to **Section V.20.b.** of this Rule.

18. Transfer of Location

- a. A Dispensary license shall only be valid at the location for which it was originally issued by the commission.
- b. A licensee shall not re-locate a dispensary without prior approval by the commission.
- c. In order to obtain approval to transfer a dispensary license to another location, a licensee shall submit the following to the commission:
 - i. An application for license transferal on a form and in a manner prescribed by the commission;
 - ii. Proof that the proposed location of the dispensary is at least one-thousand five-hundred (1,500) feet from a public or private school, church, or daycare existing before the date of the dispensary application for transfer pursuant to the Arkansas Medical Marijuana Amendment of 2016. The distance specified in this section shall be measured by the distance between the primary entrance of the cultivation facility to the nearest property line point of the school, church, or daycare facility; and
 - iii. The criteria set forth in **Section V.9.b.ii.** of these Rules.
- d. If the Commission denies an application for transfer of location, the commission shall provide written notice by certified mail or personal delivery to the licensee. The notice shall provide an explanation for the denial of the application. The licensee may request a hearing before the commission pursuant to **Section V.20.b.** of these Rules.

19. Issuance of Temporary License

- a. The commission may issue a temporary license to another natural person in conjunction with a dispensary when the natural person whose name is on the license of the dispensary ceases to be in actual control of the dispensary.

- b. In issuing a temporary license, the commission will determine the term of the temporary license, but at no time will a temporary license remain valid beyond the original term of the license it replaced.
 - c. The issuance of a temporary license by the commission will immediately terminate the license which is to be replaced.
 - d. The natural person to whom a temporary license is issued must meet the requirements of **Section V.4, 5 & 6** of these rules.
 - e. A temporary license can only be issued at the request of the natural person to whom a license was issued, that person's heir, or the entity on whose behalf the individual applicant held the license.
 - f. A temporary license cannot be transferred, sold or otherwise disposed of without the approval of the commission.
 - g. A temporary license can be renewed in a manner consistent with a license to operate a dispensary under **Section V.13** of these rules.
20. Appellate Procedure following Denial of Application for License, Renewal, Transfer of License, or Location.
- a. Denial of Application for License
 - i. If the commission denies an application for a dispensary license, the commission's decision may be appealed to the circuit court of the county in which the dispensary is situated or the Pulaski County Circuit Court. Appeals shall be governed by the terms of the Arkansas Administrative Procedure Act, §25-15-201 et seq.
 - b. Denial of Application for Renewal of License, Transfer of License or Transfer of Location
 - i. If the commission denies an application for the renewal of a dispensary license, the transfer of a license, or the transfer of the location for a license, the licensee may request a hearing before the commission by filing a written request no later than fifteen (15) days from receipt of the notice of denial from the commission.
 - ii. The commission shall conduct a hearing no later than sixty (60) days from the receipt of the request for hearing. The commission shall provide notice of the hearing to all interested parties, conduct the hearing, and issue a decision in accordance with the Arkansas Administrative Procedure Act, §25-15-201 et seq.
 - iii. The commission's decision may be appealed to the circuit court of the county in which the dispensary is situated or the Pulaski County Circuit Court. Appeals shall be governed by the terms

of the Arkansas Administrative Procedure Act, §25-15-201 et seq.

21. Hiring of Consultants

- a. The commission may retain the services of a contractor or consultant.
 - i. The selection of any contractor or consultant shall be conducted pursuant to the procurement laws of the State of Arkansas.
 - ii. The recommendations and findings of any contractor or consultant shall not be final and binding unless approved by a majority vote of the commission.

Exhibit C

Arkansas Medical Marijuana Commission December 20, 2016

On the 20th day of December, 2016 the Arkansas Medical Marijuana Commission (AMMC) convened at Little Rock, Arkansas. In attendance were the Arkansas Medical Marijuana Commissioners: Dr. Ronda Henry-Tillman, Commissioner, Dr. Stephen J. Carroll, Travis W. Story, Esq., James Miller, and Dr. J. Carlos Roman.

Commissioner Tillman called the meeting to order.

The Commissioners reviewed the meeting minutes from the December 12, 2016 meeting of the AMMC. Commissioner Story noted that the minutes did not state which commissioner made the motion to grant the AMMC a stipend of eighty-five dollars (\$85.00) per day for each meeting attended or for any day while performing any proper business of the AMMC. Commissioner Story stated that he made the motion, and Commissioner Miller provided the second. Commissioner Story asked that the 12/12/16 minutes be amended to reflect this. Commissioner Tillman agreed. A motion was made to accept the minutes, the motion received a second, and the minutes were approved, as amended.

The commissioners discussed the approach they want to take in accomplishing their duties under the Amendment. Commissioner Story expressed concerns for the cultivation facilities and their economic success, and stated he preferred issuing four (4) license for cultivation facilities. Commissioner Tillman expressed concerns about having facilities to serve all areas of the state. Commissioner Roman discussed having cultivation facilities in each congressional district of Arkansas. Commissioner Tillman also noted there are five (5) public health regions for the state. Commissioner Story distributed a map of the Arkansas congressional districts, and Commissioner Tillman said she would obtain a map showing the public health districts. Commissioner Roman made a motion to limit the number of initial cultivation licenses issued to five (5), with one (1) cultivation license to be issued in each public health district. His motion received a second. The motion passed by a vote of 3-2.

Commissioner Tillman stated she thinks the AMMC needs to put together a statement of understanding about what a cultivation facility looks like. Commissioner Roman expressed concerns about requirements for security. He suggested traveling to existing facilities so that the AMMC can get an idea of what these facilities look like. Commissioner Carroll raised the issue of testing the marijuana products. Commissioner Story stated he prefers a narrow definition of cultivation facility. Commissioner Roman expressed concerns about the potency and quality of products produced by cultivation facilities.

Commissioner Tillman requested that someone make a motion for the commissioners to visit a cultivation facility. Commissioner Roman made a motion to inquire about the possibility of obtaining a travel budget for the AMMC to visit existing facilities in other states. Commissioner Story seconded the motion. The motion passed by a vote of 5-0. Joel DiPippa, Senior Counsel for the Department of Finance and Administration – Revenue Legal Counsel advised the AMMC that research will be conducted to determine if there are funds available for the AMMC to visit an existing facility. Mr. DiPippa also advised that facilities and

commissions in other states could be identified to ensure they get the information they are seeking without incurring a waste of funds or resources.

The AMMC discussed the constitutional timelines established under the amendment. Mr. DiPippa advised the AMMC they need to have a somewhat polished set of rules available to post for public comment by the end of January in order to meet the rules promulgation deadline of March 9.

Mr. DiPippa advised the AMMC on steps they need to take with regard to the Arkansas Administrative Procedure Act in terms of promulgating their rules.

The AMMC set their next meeting for Thursday December 22, 2016 at 5:00 p.m. An additional meeting was scheduled for Tuesday December 27, 2016 at 4:00 p.m.

There being no further business, the meeting was adjourned.

Approved:

Dr. Ronda Henry-Tillman, Chairperson

Exhibit D

RULES AND REGULATIONS GOVERNING THE OVERSIGHT OF MEDICAL MARIJUANA CULTIVATION FACILITIES AND DISPENSARIES BY THE ALCOHOLIC BEVERAGE CONTROL DIVISION

SECTION 1. AUTHORITY OF THE BOARD

These rules and regulations governing the oversight of medical marijuana cultivation facilities and dispensaries in Arkansas are duly adopted and promulgated by the Arkansas Alcoholic Beverage Control Board pursuant to Amendment No. 98 of the Constitution of the State of Arkansas of 1874, The Medical Marijuana Amendment of 2016.

SECTION 2. SCOPE

These rules and regulations govern the oversight of medical marijuana cultivation facilities and dispensaries in Arkansas. These rules govern the requirements for record keeping, security, and personnel at cultivation facilities and dispensaries. These rules govern the requirements for the manufacturing, processing, packaging, dispensing, disposing, advertising, and marketing of medical marijuana by cultivation facilities and dispensaries. These rules govern the procedures for inspecting and investigating cultivation facilities and dispensaries. These rules govern the procedures for sanctioning, suspending, and terminating cultivation facility and dispensary licenses for violations of the amendment or these rules.

SECTION 3. DEFINITIONS

- (1) “Acquire” or “Acquisition” means coming to possess marijuana by means of any legal source herein authorized, not from an unauthorized source, and in accordance with the Amendment and any rules promulgated under the Amendment.
- (2) “Amendment” means the Arkansas Medical Marijuana Act of 2016.
- (3) “Approved Laboratory” means a laboratory that is accredited by the National Institute on Drug Abuse (NIDA), the National Environmental Laboratory Accreditation Conference (NELAC), and the International Organization for Standardization (ISO) or similar accrediting entity as determined by the Department, and that has been approved by the Department specifically for the testing of usable marijuana.

- (4) “Batch” means, with regard to usable marijuana, a homogenous, identified quantity of usable marijuana, no greater than five (5) pounds, that is harvested during a specified time period from a specified cultivation area, and with regard to oils, vapors, and waxes derived from usable marijuana, means an identified quantity that is uniform, that is intended to meet specifications for identity, strength, and composition, and that is manufactured, packaged and labeled during a specified time period according to a single manufacturing, packaging and labeling protocol.
- (5) “Biannual” means every six (6) months.
- (6) “Cannabinoid” means any of the chemical compounds that are the active constituents of marijuana.
- (7) “Cannabinoid concentrate” means a substance obtained by separating cannabinoids from marijuana by:
 - a. A mechanical extraction process;
 - b. A chemical extraction process using a nonhydrocarbon-based or other solvent, such as water, vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol or ethanol; or
 - c. A chemical extraction process using the hydrocarbon-based solvent carbon dioxide, provided that the process does not involve the use of high heat or pressure.
- (8) “Cannabinoid edible” means food or potable liquid into which a cannabinoid concentrate, cannabinoid extract, or dried marijuana leaves or flowers have been incorporated.
- (9) “Cannabinoid extract” means a substance obtained by separating cannabinoids from marijuana by:
 - a. A chemical extraction process using a hydrocarbon-based solvent, such as butane, hexane, or propane;
 - b. A chemical extraction process using the hydrocarbon-based solvent, carbon dioxide, if the process uses high heat or pressure; or
 - c. Any other processes identified by the Division.
- (10) “Cardholder” means a qualifying patient, a dispensary agent, a cultivation facility agent, or a designated caregiver;
- (11) “Commission” means the Medical Marijuana Commission.
- (12) “Cultivation facility” means an entity that:
 - a. Has been licensed by the Medical Marijuana Commission; and
 - b. Cultivates, prepares, manufactures, processes, packages, sells to and delivers usable marijuana to a dispensary.

- (13) “Cultivation Facility Agent” means an employee, supervisor, or agent of a cultivation facility who:
 - a. Is twenty-one (21) years of age or older;
 - b. Works at the cultivation facility; and
 - c. Has registered with the Alcoholic Beverage Control Division.
- (14) “Department” means the Arkansas Department of Health.
- (15) “Deliver” means to move medical marijuana product between a licensed dispensary and a qualified patient or designated caregiver.
- (16) “Designated caregiver” means:
 - a. A person who is at least twenty-one (21) years of age, has not been convicted of an excluded felony offense, has agreed to assist a physically disabled qualifying patient with the medical use of marijuana, and who has registered with the Department of Health pursuant to the requirements of the Amendment and these Rules.
 - b. Designated caregiver includes, without limitation, a parent:
 - i. Of a qualifying patient who is under the age of eighteen (18); and
 - ii. Required to register as a designated caregiver under the Amendment.
- (17) “Dispensary” means an entity that has been licensed by the Medical Marijuana Commission pursuant to the requirements of the Amendment.
- (18) “Dispensary agent” means:
 - a. An employee, supervisor, volunteer, or agent of a dispensary who:
 - i. Is twenty-one (21) years of age or older;
 - ii. Works at the dispensary; and
 - iii. Has registered with the Alcoholic Beverage Control Division.
 - b. An owner, officer, or board member of a dispensary who has registered with the Division pursuant to the requirements of the Amendment.
- (19) “Division” means the Arkansas Alcoholic Beverage Control Division.
- (20) “Enclosed, locked facility” means a room, greenhouse, or other enclosed area equipped with locks or other security devices that permit access only by an authorized individual;
- (21) “Excluded felony offense” means:
 - (a)(i)(a) A felony offense as determined by the jurisdiction where the felony offense occurred.
 - (b) The Medical Marijuana Commission, the Department of Health, or the Alcoholic Beverage Control Division shall determine whether an offense is a felony offense based upon a review of the relevant court records concerning the conviction for the offense.

- ii. An offense that has been sealed by a court or for which a pardon has been granted is not considered an excluded felony offense; or
- (b) A violation of state or federal controlled-substance law that was classified as a felony in the jurisdiction where the person was convicted, but not including:
 - i. An offense for which the sentence, including any term of probation, incarceration, or supervised release, was completed ten (10) or more years earlier; or
 - ii. An offense that has been sealed by a court or for which a pardon has been granted.
- (22) “Flowering” means the reproductive state of *Cannabis* in which the plant is in a light cycle intended to stimulate the production of flowers, trichomes, and cannabinoids characteristic of marijuana.
- (23) “Harvest Lot” means a specifically identified quantity of marijuana that is uniform in strain, cultivated using the same growing practices, harvested at the same time at the same location and cured under uniform conditions.
- (24) “Immature Marijuana Plant” means a seedling or nonflowering marijuana plant.
- (25) “Inventory Tracking System” means the required seed to sale tracking system that tracks medical marijuana from either seed or immature plant state until the usable marijuana is sold to a qualified patient or designated caregiver or is destroyed.
- (26) “Licensed Facility” means either a cultivation facility or dispensary licensed by the Commission.
- (27) “Lot” means an identified portion of a batch, that is uniform and that is intended to meet specifications for identity, strength, and composition; or in the case of a vapor, oil, or wax derived from usable marijuana, an identified quantity produced in a specified period of time in a manner that is uniform and that is intended to meet specifications for identity, strength, and composition.
- (28) “Manufacturing and Processing”:
 - a. Means the manufacturing, processing, compounding or conversion of marijuana into cannabinoid products, cannabinoid concentrates, or cannabinoid extracts.
 - b. Does not mean the drying of marijuana.
- (29) “Mature Marijuana Plant” means a marijuana plant that is flowering.

- (30) “Medical Marijuana Container” means a sealed, traceable, food compliant, child-proof packaging that cannot be opened by a child, or that prevents ready access to toxic or harmful amounts of the packaged product, and that meets the testing requirements in accordance with the method described in 16 C.F.R. § 1700.20, as existing on January 1, 2017.
- (31) “Process Lot” means
 - a. Any amount of cannabinoid concentrate or extract of the same type and processed at the same time using the same extraction methods, standard operating procedures, and batches for the harvest lot; or
 - b. Any amount of cannabinoid products of the same type and processed at the same time using the same ingredients, standard operating procedures and batches from the same harvest lot or process lots of cannabinoid concentrate or extract.
- (32) “Production Area” means any area in a cultivation facility or dispensary used for the growing of medical marijuana plants.
- (33) “Qualifying medical condition” means one or more of the following:
 - a. Cancer, glaucoma, positive status for human immunodeficiency virus/acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Tourette’s syndrome, Crohn’s disease, ulcerative colitis, post-traumatic stress disorder, severe arthritis, fibromyalgia, Alzheimer’s disease, or the treatment of these conditions;
 - b. A chronic or debilitating disease or medical condition or its treatment that produces one (1) or more of the following: cachexia or wasting syndrome; peripheral neuropathy; intractable pain, which is pain that has not responded to ordinary medications, treatment or surgical measures for more than six (6) months; severe nausea; seizures, including without limitation those characteristic of epilepsy; or severe and persistent muscle spasms, including, without limitation those characteristic of multiple sclerosis; and
 - c. Any other medical condition or its treatment approved by the Department pursuant to its Rules and the Amendment.
- (34) “Qualifying patient” means a person who has been diagnosed by a physician as having a qualifying medical condition and who has registered with the Department in accordance with these Rules and the Amendment.
- (35) “Registry identification card” means a document issued by the Department that identifies a person as a qualifying patient or a designated caregiver.
- (36) “Sealed” means expunge, remove, sequester, and treat as confidential the record or records of a felony offense;

- (37) “Shipping Container” means a sealable, tamper-evident container used for the transport of medical marijuana between licensed facilities.
- (38) “Testing” means the process and procedures provided by an approved laboratory for testing of usable marijuana, consistent with provisions of this rule.
- (39) “Transport” means to move medical marijuana between licensed facilities or between a licensed facility and approved laboratory.
- (40) “Usable marijuana” means the stalks, seeds, roots, dried leaves, flowers, oils, vapors, waxes, and other portions of the marijuana plant and any mixture or preparation thereof. Usable marijuana includes cannabinoid edibles, cannabinoid concentrates, and cannabinoid extracts. Usable marijuana does not include the weight of any ingredients other than marijuana that are combined with marijuana and prepared for consumption as food and drink.
- (41) “Unique Identification Number” (“UIN”) means a unique number generated by the Inventory Tracking System and assigned to all usable marijuana for the purpose of tracking the marijuana from its seed form to ultimate sale to a qualified patient/designated caregiver or destruction.
- (42) “Visiting qualifying patient” means a patient with a qualifying medical condition who is not a resident of Arkansas or who has been a resident of Arkansas for less than thirty (30) days and who is in actual possession of a registry identification card or its equivalent that is issued under the laws of another state, district, territory, commonwealth, or insular possession of the United States and pertains to a qualifying medical condition under the Amendment.

SECTION 4. OVERSIGHT AND INSPECTION REQUIREMENTS

RR 4.1. *Inspection and Investigation* - Dispensaries and cultivation facilities shall be subject to reasonable inspection by the Alcoholic Beverage Control Division.

- a. The Director of the Alcoholic Beverage Control Administration, or the Director of Alcoholic Beverage Control Enforcement, or an enforcement agent, may:
 - i. Inspect, without the need for a search warrant, the licensed premises of a dispensary or cultivation facility, including any marijuana and marijuana product on the premises, equipment used in cultivating, processing, testing, or storing marijuana, the

marijuana establishment's records required by these rules and computers, at any time;

- ii. Issue a written report or notice of his or her findings;
 - iii. Exercise law enforcement powers, if authorized, and take any other action the Director of Alcoholic Beverage Control Administration or Director of Alcoholic Beverage Control Enforcement determines is necessary; and
 - iv. Enlist the assistance of any law enforcement officer not directly employed by Alcoholic Beverage Control Enforcement toward performance of these enforcement duties.
- b. A dispensary or cultivation facility, and any licensee, employee, or agent shall cooperate with the Director of Alcoholic Beverage Control Administration, the Director of Alcoholic Beverage Control Enforcement, an enforcement agent, an employee of the board, or assisting law enforcement officer, acting in an official capacity to enforce the laws related to marijuana, including but not limited to:
- i. Permitting entry upon and inspection of the licensed premises; and
 - ii. Providing access to records required by these rules and computers, when requested by the Director of Alcoholic Beverage Control Administration, or the Director of Alcoholic Beverage Control Enforcement, or an enforcement agent, or an assisting law enforcement officer.

RR 4.2. *Inspection required prior to operation.* All licensed dispensaries and cultivation facilities shall notify the Alcoholic Beverage Control Division of their intent to commence operations. The Alcoholic Beverage Control Division shall conduct a thorough inspection of the premises for the following:

- a. Verify possession and accuracy of detailed plans and elevation drawings required in RR 6.2 and RR 7.2;
- b. Verify connection and accessibility to the Inventory Tracking System;
- c. Verification of operational alarm and video surveillance systems;
- d. Verification of secure locks throughout the facility;
- e. Verification of controls to limited access areas;
- f. Verification of compliance with perimeter restrictions;
- g. Any existing personnel records as required by RR 19.4; and

- h. Review initial inventory required by RR 10.1, and verify for accuracy.
- RR 4.3. ***Biannual Inspections Required.*** The Alcoholic Beverage Control Division shall conduct, at minimum, one (1) inspection every six (6) months, of all dispensaries and cultivation facilities. The biannual inspections shall include:
- a. Verify possession and accuracy of detailed plans and elevation drawings required in RR 6.2 and RR 7.2;
 - b. Verify connection and accessibility to the Inventory Tracking System;
 - c. Verification of operational alarm and video surveillance systems;
 - d. Verification of secure locks throughout the facility;
 - e. Verification of controls to limited access areas;
 - f. Verification of compliance with perimeter restrictions;
 - g. Verification of current, complete, and accurate personnel records; and
 - h. Review biannual inventory reports required by RR 10.1, and verify for accuracy.

RR 4.4. ***Closure of Business***

- a. The Alcoholic Beverage Control Division may issue an order providing for the manner and condition under which usable marijuana may be transferred or sold to another licensed facility or must otherwise be disposed of under the following circumstances:
 - i. Revocation of a license;
 - ii. Surrender of a license; or
 - iii. Expiration of a license.

SECTION 5. RECORD KEEPING REQUIREMENTS FOR DISPENSARIES AND CULTIVATION FACILITIES.

RR 5.1. ***Records required to be kept for current year and three (3) proceeding calendar years.***

- a. Records regarding the disposal of medical marijuana.
- b. General Business Records. Dispensaries and cultivation facilities shall keep all books and records necessary to fully account for each business transaction conducted under its license.
- c. Records of all required inventory reports.
- d. Records of pesticide and chemical applications as required by RR 11.3.
- e. Medical Marijuana Product Transactions

- i. Dispensaries shall keep of a record of each transaction, including the amount of marijuana dispensed, the amount of compensation received, and the registry identification number of the qualifying patient or designated caregiver.
 - ii. Cultivation facilities shall keep a record of all transactions for medical marijuana to dispensaries or another marijuana cultivation facility.
- f. Personnel Records

SECTION 6. CONSTRUCTION SPECIFICATIONS AND SECURITY REQUIREMENTS FOR CULTIVATION FACILITIES.

RR 6.1. *General Security Requirements for Cultivation Facilities*

- a. Duty to Operate a Secure Premises
 - i. All Cultivation Facilities shall implement appropriate security measures to deter and prevent the unauthorized entrance into areas containing marijuana and the theft and diversion of marijuana.
 - ii. A licensee is responsible for the security of all marijuana items on the licensed premises or in transit from the facility.
 - iii. Cultivation Facilities shall comply with all applicable security requirements set forth in these rules.

RR 6.2. *Construction of Premises*

- a. Enclosed and Secure Facility – All cultivation of medical marijuana shall take place within a building, greenhouse or other structure that:
 - i. Has a complete roof enclosure supported by connecting walls, constructed of solid materials, extending from the ground to the roof;
 - ii. Is secure against unauthorized entry;
 - iii. Has a foundation, slab, or equivalent base to which the floor is securely attached;
 - iv. Meets performance standards ensuring that cultivation and processing activities cannot be and are not perceptible from the structure in terms of:
 - 1. Common visual observation;
 - 2. Odors, smell, fragrances, or other olfactory stimulus;
 - 3. Light pollution, glare, or brightness;
 - 4. Adequate ventilation to prevent mold; and

5. Noise;

- v. Provides complete visual screening, and
 - vi. Is accessible only through one (1) or more lockable doors.
- b. Commercial grade, non-residential door locks shall be installed on every external door, and gate if applicable. All external locks shall be equipped with biometric access controls. Only authorized personnel shall have access to locked and secured areas. Facilities shall maintain detailed records of employees with access to locked and secured areas. Records shall be made available to the Division upon request.
- c. All cultivation facilities shall maintain detailed plans and elevation drawings of all operational areas involved with the production, processing, and manufacturing of medical marijuana. The plan shall identify the following:
 - i. All storage areas, ventilation systems, and equipment used for production, processing, and manufacturing;
 - ii. All entrances and exits to the facility;
 - iii. All windows, skylights, and retractable mechanisms built into the roof;
 - iv. The location of all required security cameras;
 - v. The location of all alarm inputs, detectors, and sirens;
 - vi. All video and alarm system surveillance areas;
 - vii. All production, processing, and manufacturing areas shall be labeled according to the specific activity occurring within the area;
 - viii. All restricted and limited access areas shall be identified; and
 - ix. All non-production areas shall be labeled according to their purpose.
- d. Floor plans and elevation drawings shall be kept current and on the premises of the cultivation facility. Plans and elevation drawings shall be made available to the Division upon request.
- e. Floors, walls, and ceilings shall be constructed in such a manner that they may be adequately cleaned and kept clean and in good repair.
- f. Cultivation facilities shall have adequate lighting in all areas where Medical Marijuana is stored and where equipment and utensils are cleaned.
- g. Plumbing shall be of adequate size and design and adequately installed and maintained to carry sufficient quantities of water to required locations throughout the facility and to properly convey sewage and

liquid disposable waste from the facility. There shall be no cross-connections between the potable and waste water lines.

- h. All facilities shall be constructed to meet the standards of any applicable state and local electrical, fire, plumbing, and building specification codes.

RR 6.3. *Storage Area Requirements*

- a. Harvested marijuana and any product processed from harvested marijuana shall be stored in one of the following types of secured areas:

- i. Where small quantities permit, a safe or steel cabinet;

- 1. Which safe or steel cabinet shall have the following specification or the equivalent: thirty (30) man-minutes against surreptitious entry, ten (10) man-minutes against forced entry, twenty (20) man-hours against lock manipulation, and twenty (20) man-hours against radiological techniques;
 - 2. Which safe or steel cabinet, if it weighs less than seven hundred fifty (750) pounds, is bolted or cemented to the floor or wall in such a way that it cannot be readily removed; and
 - 3. Which safe or steel cabinet, if necessary, depending upon the quantities and type of controlled substances stored, is equipped with an alarm system as described in RR 6.4.

- ii. A vault:

- 1. The walls, floors, and ceilings of which vault are constructed of at least eight (8) inches of reinforced concrete or other substantial masonry, reinforced vertically and horizontally with one-half ($\frac{1}{2}$) inch steel rods tied six (6) inches on center, or the structural equivalent to such reinforced walls, floors, and ceilings;
 - 2. The door and frame unit of which vault shall conform to the following specification or the equivalent: thirty (30) man-minutes against surreptitious entry, ten (10) man-minutes against forced entry, twenty (20) man-hours against lock manipulation, and twenty (20) man-hours against radiological techniques;
 - 3. Which vault, if operations require it to remain open for frequent access, is equipped with a "day-gate" which is self-closing and self-locking, or the equivalent, for use

- during the hours of operation in which the vault door is open;
4. The walls or perimeter of which vault are equipped with an alarm system as described in RR 6.4.
 5. The door of which vault is equipped with contact switches; and
 6. Which vault has one of the following: Complete electrical lacing of the walls, floor and ceilings; sensitive ultrasonic equipment within the vault; a sensitive sound accumulator system; or other such device designed to detect illegal entry.

RR 6.4. *Alarm System*

- a. All cultivation facilities shall be equipped with an alarm system which, upon attempted unauthorized entry, shall transmit a signal directly to a central protection company or a local or State police agency which has a legal duty to respond. A designated agent of the cultivation facility shall also receive notification of any such signal.
- b. Alarm systems shall provide coverage for all points of ingress and egress to the facility, including, but not limited to, doorways, windows, loading bays, skylights, and retractable roof mechanisms.
- c. Alarm systems shall provide coverage of any room with an exterior wall, any room containing a safe, and any room used to grow or store medical marijuana.
- d. Alarm systems shall be equipped with a “panic device” that upon activation will not only sound any audible alarm components, but will also notify law enforcement.
- e. Alarm systems shall have “duress” and “hold up” features to enable an agent to activate a silent alarm notifying law enforcement of an emergency.
- f. Alarms system must be equipped with failure notification systems to notify cultivation facilities and law enforcement of any failure in the alarm system.
- g. Alarm systems shall have the ability to remain operational during a power outage.

RR 6.5. *Video Surveillance System*

- a. All cultivation facilities shall be equipped with video surveillance systems consisting of the following:
 - i. Digital video cameras;

- ii. 24 hour per day, 7 day per week recording capabilities;
 - iii. The ability to remain operational during a power outage;
 - iv. Digital archiving capabilities;
 - v. On-site and off-site monitoring capabilities; and
 - vi. All facilities must maintain at least one on-site display monitor connected to the surveillance system at all times. The monitor shall have a screen size of at least 12 inches.
- b. All cultivation facilities shall maintain camera coverage of the following areas:
- i. All points of ingress and egress to the facility, including, but not limited to, doorways, windows, loading bays, skylights, and retractable roof mechanisms;
 - ii. Any room with an exterior wall, except restrooms, any room containing a safe, and any room or area used to grow, process, manufacture, or store medical marijuana;
 - iii. All areas in which any part of the disposal process of marijuana occurs; and
 - iv. All parking areas and any alley areas immediately adjacent to the building.
- c. All recording devices shall display a date and time stamp on all recorded video.
- d. All recording devices shall have the capability to produce a still image from the video recording, and each facility shall maintain, on site, a video printer capable of immediately producing a clear still image from any video camera image.
- e. Access to on-site surveillance system controls and monitoring shall be limited to authorized personnel. Cultivation facilities shall identify individuals with access to surveillance system controls and monitoring upon request by the Division.
- f. All surveillance recordings shall be maintained for a minimum of 90 days.

RR 6.6. *Perimeter Requirements*

- a. The perimeter of all cultivation facilities shall be maintained in such a way to discourage theft and diversion of marijuana. All cultivation facilities shall maintain the following:
- i. Adequate lighting to facilitate surveillance; and
 - ii. Foliage and landscaping that does not allow for a person or persons to conceal themselves from sight.

- b. All stages of medical marijuana production and the disposal of unusable medical marijuana on the premises of a cultivation facility shall not be visible or accessible to the public.
- c. The cultivation facility shall maintain any walls or fencing necessary to shield the operations of the facility from public access and view.
- d. The cultivation facility shall ensure any odors that may arise from any stage of marijuana production or the disposal of marijuana are not detectable by the public from outside the cultivation facility.

SECTION 7. CONSTRUCTION SPECIFICATIONS SECURITY REQUIREMENTS FOR DISPENSARIES.

RR 7.1. *General Security Requirements for Dispensaries*

- a. Duty to Operate a Secure Premises
 - i. All dispensaries shall implement appropriate security measures to deter and prevent the theft and diversion of marijuana.
 - ii. A licensee is responsible for the security of all marijuana items on the licensed premises or in transit from the facility.
 - iii. Dispensaries shall comply with all applicable security requirements set forth in these rules.

RR 7.2. *Construction of Premises*

- a. Enclosed and Secure Facility
 - i. Dispensaries shall be enclosed on all sides by permanent walls and doors.
- b. All cultivation of medical marijuana by a dispensary shall take place within a building, greenhouse or other structure that:
 - i. Has a complete roof enclosure supported by connecting walls, constructed of solid materials, extending from the ground to the roof;
 - ii. Is secure against unauthorized entry;
 - iii. Has a foundation, slab, or equivalent base to which the floor is securely attached;
 - iv. Meets performance standards ensuring that cultivation and processing activities cannot be and are not perceptible from the structure in terms of:
 - 1. Common visual observation;
 - 2. Odors, smell, fragrances, or other olfactory stimulus;
 - 3. Light pollution, glare, or brightness;
 - 4. Adequate ventilation to prevent mold; and

5. Noise;

- v. Provides complete visual screening, and
 - vi. Is accessible only through one (1) or more lockable doors.
- c. Commercial grade, non-residential door locks shall be installed on every external door, and gate if applicable. All external locks shall be equipped with biometric access controls. Only authorized personnel shall have access to locked and secured areas. Facilities shall maintain detailed records of employees with access to locked and secured areas. Records shall be made available to the Division upon request.
- d. All dispensaries shall maintain detailed plans and elevation drawings of all operational areas involved with the dispensing and production of medical marijuana. The plan shall identify the following:
 - i. All entrances and exits to the facility;
 - ii. All windows, skylights, and retractable mechanisms built into the roof;
 - iii. All designated areas for qualified patients and designated care givers;
 - iv. All limited access areas;
 - v. All storage areas, ventilation systems, and equipment used for production, processing, and manufacturing;
 - vi. The location of all required security cameras;
 - vii. The location of all alarm inputs, detectors, and sirens;
 - viii. All video and alarm system surveillance areas;
 - ix. All production, processing, and manufacturing areas shall be labeled according to the specific activity occurring within the area;
 - x. All restricted and limited access areas shall be identified; and
 - xi. All areas shall be labeled according to their purpose.
- e. Floor plans and elevation drawings shall be kept current and on the premises of the dispensary. Plans and elevation drawings shall be made available to the Division upon request.
- f. Floors, walls, and ceilings shall be constructed in such a manner that they may be adequately cleaned and kept clean and in good repair.
- g. Dispensaries shall have adequate lighting in all areas where Medical Marijuana is stored and where equipment and utensils are cleaned.
- h. Plumbing shall be of adequate size and design and adequately installed and maintained to carry sufficient quantities of water to required locations throughout the facility and to properly convey sewage and

liquid disposable waste from the facility. There shall be no cross-connections between the potable and waste water lines.

- i. All facilities shall be constructed to meet the standards of any applicable state and local electrical, fire, plumbing, and building specification codes.

RR 7.3. *Storage Area Requirements*

- a. Any dispensary storing usable marijuana harvested from mature plants pursuant to RR11.3 shall comply with the storage area requirements in RR 6.3.

RR 7.4. *Alarm System*

- a. All dispensaries shall be equipped with an alarm system which, upon attempted unauthorized entry, shall transmit a signal directly to a central protection company or a local or State police agency which has a legal duty to respond. A designated agent of the dispensary shall also receive notification of any such signal.
- b. Alarm systems shall provide coverage for all points of ingress and egress to the facility, including, but not limited to, doorways, windows, loading bays, skylights, and retractable roof mechanisms.
- c. Alarm systems shall provide coverage of any room with an exterior wall, any room containing a safe, and any room used to grow or store medical marijuana.
- d. Alarm systems shall be equipped with a “panic device” that upon activation will not only sound any audible alarm components, but will also notify law enforcement.
- e. Alarm systems shall have “duress” and “hold up” features to enable an agent to activate a silent alarm notifying law enforcement of an emergency.
- f. Alarms system must be equipped with failure notification systems to notify dispensaries and law enforcement of any failure in the alarm system.
- g. Alarm systems shall have the ability to remain operational during a power outage.

RR 7.5. *Video Surveillance System*

- a. All dispensaries shall be equipped with video surveillance systems consisting of the following:
 - i. Digital video cameras;
 - ii. 24 hour per day, 7 day per week recording capabilities;
 - iii. The ability to remain operational during a power outage;

- iv. Digital archiving capabilities;
 - v. On-site and off-site monitoring capabilities; and
 - vi. All facilities must maintain at least one on-site display monitor connected to the surveillance system at all times. The monitor shall have a screen size of at least 12 inches.
- b. All dispensaries shall maintain camera coverage of the following areas:
- i. All points of ingress and egress to the facility, including, but not limited to, doorways, windows, loading bays, skylights, and retractable roof mechanisms;
 - ii. Any room with an exterior wall, except restrooms, any room containing a safe, and any room or area used to grow, process, manufacture, or store medical marijuana;
 - iii. All areas in which any part of the disposal process of marijuana occurs;
 - iv. All point of sale areas.
 - v. All areas for qualified patients and designated caregivers, except restrooms; and
 - vi. All parking areas and any alley areas immediately adjacent to the building.
- c. All recording devices shall display a date and time stamp on all recorded video.
- d. All recording devices shall have the capability to produce a still image from the video recording, and each facility shall maintain, on site, a video printer capable of immediately producing a clear still image from any video camera image.
- e. Access to on-site surveillance system controls and monitoring shall be limited to authorized personnel. Dispensaries shall identify individuals with access to surveillance system controls and monitoring upon request by the Division.
- f. All surveillance recordings shall be maintained for a minimum of 90 days.

RR 7.6. *Perimeter Requirements*

- a. The perimeter of all dispensaries shall be maintained in such a way to discourage theft and diversion of marijuana. All dispensaries shall maintain the following:
- i. Adequate lighting to facilitate surveillance; and
 - ii. Foliage and landscaping that does not allow for a person or persons to conceal themselves from sight.

- b. All stages of medical marijuana production and the disposal of unusable medical marijuana on the premises of a dispensary shall not be visible or accessible to the public from outside the premises of the facility.
- c. The dispensary shall ensure any odors, which may arise from any stage of marijuana production or the disposal of marijuana, are not detectable by the public from outside the dispensary.

SECTION 8. OPERATIONAL REQUIREMENTS FOR CULTIVATION FACILITIES

RR 8.1. *Hours of Operation*

- a. A cultivation facility may operate 24 hours a day.
- b. Cultivation facilities shall not be open to the public. Visitors and contractors shall only be present on the property pursuant to RR 8.3.
- c. A cultivation facility may transport medical marijuana to another cultivation facility, dispensary, or approved laboratory between the hours of 7 a.m. and 9 p.m.

RR 8.2. *Registry Identification Card Required.* Any employee, supervisor, or agent employed by a cultivation facility must have a current Registry Identification Card issued by the Alcoholic Beverage Control Division on their person at all times while present at a cultivation facility.

RR 8.3. *Visitor Policy*

- a. All cultivation facilities shall prepare and keep written policies regarding any visitors to the premises who are not in possession of a registry identification card.
- b. All cultivation facilities shall maintain a log of visitors to the premises. The log shall consist of the visitor's name, name of agent assigned to escort the visitor, purpose of visit, time of arrival, and time of departure.
- c. Visitor logs shall be maintained for a minimum of three (3) years.
- d. All visitors shall be issued a visitor identification tag. The tag shall bear the individual's name and be worn by the visitor for the duration of the individual's time on the premises.
- e. All visitors shall be escorted by a cultivation facility agent at all times while present on the property.
- f. Contractors conducting repairs, maintenance or other specific duties on the property may be escorted to their work site and left unaccompanied while completing a job. If left unattended, cultivation facility personnel shall ensure the contractor and area under repair are under video

surveillance for the duration of the contractor's time spent on the premises.

- g. If a contractor is required on the premises for more than two (2) consecutive days, the cultivation facility shall notify the division of the contractor's identity and purpose for being on the premises.

RR 8.4. *Limited Access Areas*

- a. Cultivation Facilities shall limit access to areas where marijuana is grown, harvested, processed, and stored to authorized personnel.
 - i. Signage
 - 1. Limited Access areas shall be clearly marked.
 - ii. Controlled Access
 - 1. Limited Access areas shall be locked and accessible only by authorized personnel.
 - 2. Cultivation facilities shall keep current rosters of employees authorized to enter limited access areas.

RR 8.5. *General Sanitation Requirements for Cultivation Facilities.*

- a. Any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination for whom there is a reasonable possibility of contact with Medical Marijuana shall be excluded from any operations which may be expected to result in such contamination until the condition is corrected.
- b. Cultivation Facilities shall maintain hand-washing areas that are adequate and convenient to agents. Hand washing or sanitizing areas shall include running water at a suitable temperature and a sanitary towel service or suitable drying device.
- c. Any person working in direct contact with Medical Marijuana shall:
 - i. Maintain adequate personal cleanliness;
 - ii. Wash hands thoroughly in an adequate hand-washing area before starting work and at any other time when the hands may have become soiled or contaminated.
- d. Litter and waste shall be properly removed and waste disposal systems shall be maintained so that they do not constitute a source of contamination in areas where medical marijuana is exposed.
- e. Cultivation facilities shall provide adequate screening against the entry of pests. Rubbish shall be disposed of so as to minimize the

development of odor and minimize the potential for the waste becoming an attractant or breeding place for pests.

- f. Toxic cleaning compounds, sanitizing agents, solvents used in the production of medical marijuana concentrates, and pesticide chemicals shall be identified, held and stored in a manner that protects against contamination of medical marijuana, and in a manner that is in accordance with any applicable local, state or federal law, rule, regulation, or ordinance.

RR 8.6. ***Material Safety Data Sheet Required.*** All cultivation facilities shall maintain a material safety data sheet for any toxic cleaning compounds, sanitizing agents, solvents used in the production of medical marijuana extracts and concentrates, pesticide chemicals, and any other agricultural chemical used or stored on the premises. A copy of the Material Safety Data Sheet shall be kept in any area of the facility where the products are used or stored. Material Safety Data Sheets shall be kept for the period of time required by any applicable state or federal regulation. If a state or federal regulation does not apply to a particular material, the material data sheet shall be kept for a minimum of three (3) years.

SECTION 9. OPERATIONAL REQUIREMENTS FOR DISPENSARIES

RR 9.1. ***Hours of Operation***

- a. A dispensary may only operate between the hours of 7:00 a.m. and 10:00 p.m.
- b. A dispensary may transport medical marijuana to another dispensary, cultivation facility, or approved laboratory between the hours of 7:00 a.m. and 9:00 p.m.
- c. A dispensary may deliver medical marijuana to a qualified patient or designated caregiver between the hours of 9:00 a.m. and 7:00 p.m.

RR 9.2. ***Registry Identification Card Required.*** Any employee, supervisor, or agent employed by a dispensary must have a current Registry Identification Card issued by the Alcoholic Beverage Control Division on their person at all times while present at the dispensary.

RR 9.3. ***Qualified Patient/Designated Caregiver Areas***

- a. Dispensaries shall identify and clearly define areas where medical marijuana will be dispensed to qualified patients and designated caregivers.

RR 9.4. ***Limited Access***

- a. Only the following individuals shall be allowed to access a dispensary:

- i. Individuals in possession of a current registry identification card issued by the Department of Health or the Alcoholic Beverage Control Division, provided, a parent with a registry identification card may bring his or her child or children into a dispensary for the purpose of purchasing usable marijuana and a parent without a registry identification card may accompany his or her child who has a registry identification card into a dispensary or cultivation facility for the purpose of purchasing usable marijuana for the child;
- ii. Individuals authorized by law and these rules to be on the premises;
- iii. Contractors
 - 1. If it is necessary for a contractor to enter a dispensary to conduct repairs, maintenance or other specific duties on the property, the contractor may be escorted to their work site and left unaccompanied while completing a job. If left unattended, dispensary personnel shall ensure the contractor and area under repair are under video surveillance for the duration of the contractor's time spent on the premises.
 - 2. If a contractor is required on the premises for more than two (2) consecutive days, the cultivation facility shall notify the division of the contractor's identity and purpose for being on the premises.

RR 9.5. *Limited Access Areas*

- a. Dispensaries shall limit access to areas where marijuana is grown, harvested, processed, and stored to authorized personnel.
 - i. Signage
 - 1. Limited Access areas shall be clearly marked.
 - 2. Any doorways separating qualified patient/designated caregiver areas and limited access areas shall be posted and equipped with controls to restrict entry.
 - ii. Controlled Access
 - 1. Limited Access areas shall be locked and accessible only by authorized personnel.
 - 2. Dispensaries shall keep current rosters of employees authorized to enter limited access areas.

3. Contractors may access limited access areas subject to the provisions in RR 9.4(a)(iii).

RR 9.6. *General Sanitation Requirements for Dispensaries Facilities.*

- a. Any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination for whom there is a reasonable possibility of contact with Medical Marijuana shall be excluded from any operations which may be expected to result in such contamination until the condition is corrected.
- b. Dispensaries shall maintain hand-washing areas that are adequate and convenient to agents. Hand washing or sanitizing areas shall include running water at a suitable temperature and a sanitary towel service or suitable drying device.
- c. Any person working in direct contact with Medical Marijuana shall:
 - i. Maintain adequate personal cleanliness;
 - ii. Wash hands thoroughly in an adequate hand-washing area before starting work and at any other time when the hands may have become soiled or contaminated.
- d. Litter and waste shall be properly removed and waste disposal systems shall be maintained so that they do not constitute a source of contamination in areas where medical marijuana is exposed.
- e. Dispensaries shall provide adequate screening against the entry of pests. Rubbish shall be disposed of so as to minimize the development of odor and minimize the potential for the waste becoming an attractant or breeding place for pests.
- f. Toxic cleaning compounds, sanitizing agents, solvents used in the production of medical marijuana concentrates, and pesticide chemicals shall be identified, held and stored in a manner that protects against contamination of medical marijuana, and in a manner that is in accordance with any applicable local, state or federal law, rule, regulation, or ordinance.

RR 9.7. *Material Safety Data Sheet Required.* All dispensaries shall maintain a material safety data sheet for any toxic cleaning compounds, sanitizing agents, solvents used in the production of medical marijuana concentrates and extracts, pesticide chemicals, and any other agricultural chemical used or stored on the premises. A copy of the Material Safety Data Sheet shall be kept in any area of the facility where the products are used or stored. Material

Safety Data Sheets shall be kept for the period of time required by any applicable state or federal regulation. If a state or federal regulation does not apply to a particular material, the material data sheet shall be kept for a minimum of three (3) years.

SECTION 10. INVENTORY AND TRACKING REQUIREMENTS

RR 10.1 *Minimum Inventory Requirements*

- a. Each dispensary and cultivation facility shall:
 - i. Conduct an initial comprehensive inventory of all marijuana, including without limitation usable marijuana available for dispensing, mature marijuana plants, and seedlings at each authorized location prior to the first date the dispensary first dispenses usable marijuana or the cultivation facility cultivates, prepares, manufactures, processes, or packages usable marijuana;
 - ii. Conduct a biannual comprehensive inventory of all marijuana, including without limitation usable marijuana available for dispensing, mature marijuana plants, and seedlings at each authorized location.
 1. Biannual inventories shall be conducted every six (6) months.
 2. The first inventory required under section a.ii. shall be conducted six (6) months after the initial comprehensive inventory described in section a.i.

RR 10.2 *Inventory Tracking System.* All medical marijuana cultivation facilities and dispensaries shall utilize the Inventory Tracking System implemented by the State of Arkansas to track medical marijuana from seed to distribution to qualified patients and designated caregivers.

- a. Cultivation facilities and dispensaries shall tag either the seed or immature plant with a unique identification number.
- b. All usable marijuana shall be tagged or labeled with a unique identification number and entered into the Inventory Tracking System.
- c. The cultivation facility and dispensary shall bear the cost of the labels and tags.

- d. Cultivation facilities and dispensaries shall acquire and maintain all software, hardware, and communications infrastructures to ensure connectivity to the Inventory Tracking System.

RR 10.3 ***Batching Required.*** At the time of planting, all plants shall be accounted for as a batch with a unique batch number that shall remain with the batch through final packaging.

RR 10.4 ***Plant Identification.***

- a. All plants shall be assigned a specific number and so tagged with an individual tag with a unique identification number that will be recorded electronically or kept in an electronic file until harvest or destruction upon either of the following earliest occurring events:
 - i. A plant reaches a height of eight (8) inches and width of eight (8) inches; or
 - ii. A plant reaches maturity.
- b. All plants, regardless of accounting strategy, shall be physically inventoried on a weekly basis and records of the inventory shall be kept at the facility for at least three (3) years.

RR 10.5 ***Cultivation Facility Tracking Requirements.***

- a. Cultivation facilities shall ensure the following events are logged into the Inventory Tracking System:
 - i. The sale or transfer of medical marijuana to a cultivation facility or dispensary;
 - ii. The transport of medical marijuana to a cultivation facility or dispensary; and
 - iii. Disposal of medical marijuana
- b. The following information, without limitation, shall be provided for each transaction described in (a):
 - i. Date of transaction or event;
 - ii. Agent identification number responsible for data entry;
 - iii. Identification number of receiving cultivation facility or dispensary;
 - iv. Batch identification number; and
 - v. Plant identification number, if applicable.

RR 10.6 ***Dispensary Tracking Requirements.***

- a. Dispensaries shall ensure the following events are logged into the Inventory Tracking System:

- i. The sale or transfer of medical marijuana to a cultivation facility or dispensary;
 - ii. The transport of medical marijuana to a cultivation facility or dispensary;
 - iii. Disposal of medical marijuana; and
 - iv. Sale of medical marijuana to a qualified patient, visiting qualified patient, or designated caregiver.
- b. The following information, without limitation, shall be provided for each transaction described in (a):
 - i. Date of transaction or event;
 - ii. Agent identification number responsible for data entry;
 - iii. Identification number of receiving cultivation facility or dispensary;
 - iv. Batch identification number;
 - v. Plant identification number, if applicable; and
 - vi. Sales to a qualified patient, visiting qualified patient, or designated care giver shall include the following in addition to any applicable information required above:
 - 1. The registry identification number of the patient or caregiver; and
 - 2. The quantity of medical marijuana dispensed.

SECTION 11. CULTIVATION OF MEDICAL MARIJUANA

RR 11.1 *Operations Plan Required.*

- a. All cultivation facilities and any dispensary cultivating medical marijuana shall establish and maintain a written Operations Plan for the production of marijuana in the facility. The plan shall include:
 - i. Standard operating procedures for the cultivation of marijuana in each production area of the facility; and
 - ii. Information regarding chemicals and pesticides applied during the production process, including but not limited to, when and the manner in which they are applied.

RR 11.2 *Limitation on Plants in a Dispensary*

- a. A dispensary may grow or possess:
 - i. Fifty (50) mature marijuana plants at any one (1) time;

- ii. One Hundred Fifty (150) immature marijuana plants at any one (1) time; and
 - iii. All usable marijuana derived from the plants under section i. of this section or predecessor plants.
- b. A dispensary may contract with a cultivation facility to cultivate one (1) or more mature marijuana plants the dispensary is permitted to grow.

RR 11.3 *Limitation on Harvests in a Dispensary*

- a. No more than fifty (50) mature marijuana plants shall be harvested for usable marijuana per month.
- b. Dispensaries storing usable marijuana harvested from mature plants must be stored pursuant to the requirements of RR 7.3.

RR 11.4 *Limitation on Plants in a Cultivation Facility*

- a. A cultivation facility may grow and possess usable marijuana in an amount reasonably necessary to meet the demand for and needs of qualifying patients as determined by the Commission with the assistance of the Department of Health.
- b. A cultivation facility may also possess marijuana seeds.

RR 11.5 *Production Areas*

- a. The size and canopy of production areas shall be maintained in accordance with the plans provided to the Commission in the application for cultivation facility or dispensary licenses.
- b. Each production area shall be maintained to allow for adequate observation and inventory.
- c. Hygiene and sanitation requirements in RR 8.5 and RR 9.5 shall be observed at all times in production areas.

RR 11.6 *Pesticides and Chemicals*

- a. All pesticides and chemicals shall only be applied to medical marijuana pursuant to the Operations Plan.
- b. All facilities cultivating medical marijuana shall maintain the following:
 - i. The material safety data sheet required of all cultivation facilities and dispensaries; and
 - ii. The original label or a copy thereof for all pesticides and other agricultural chemicals used during cultivation.

- c. All facilities cultivating medical marijuana and applying any pesticide or agricultural chemical during any stage of cultivation of medical marijuana shall document and maintain a record of the following:
 - i. The date and time of application;
 - ii. The name of the individual(s) who applied the pesticide or chemical;
 - iii. The batch number(s) of all plants receiving the application;
 - iv. The name of the product applied;
 - v. The EPA registration number of the pesticide or chemical; and
 - vi. The amount of product applied.

SECTION 12. MANUFACTURING AND PROCESSING OF MEDICAL MARIJUANA

RR 12.1. *General Requirements for Manufacturing and Processing Medical Marijuana.*

- a. Medical marijuana and medical marijuana products shall only be manufactured and processed in accordance with these rules and regulations.
- b. All equipment, counters, and surfaces used for processing shall be food-grade and shall not react adversely with any solvent being used;
- c. All counters and surfaces shall be constructed in a manner that reduce the potential for development of microbials, molds and mildews and that can be easily cleaned;
- d. Every process lot shall be assigned a unique identification number that shall be entered into the Inventory Tracking System.

RR 12.2. *General Prohibitions for Manufacturing and Processing Medical Marijuana.*

- a. A cultivation facility or dispensary shall not process or manufacture a medical marijuana item:
 - i. That by its shape or design is likely to appeal to minors, including but not limited to:

1. Products that are modeled after non-cannabis products primarily consumed by and marketed to children;
 2. Products in the shape of an animal, vehicle, person, or character; and
 3. Products that closely resemble familiar food and drink items, whether generic or branded, that are attractive to minors, including, but not limited to, candy, cookies, and brownies.
- ii. That is made by applying cannabinoid concentrates or extracts to commercially available candy, food, or beverage items.
- b. A cultivation facility or dispensary shall not treat or otherwise adulterate a cannabinoid product, concentrate, or extract with any non-cannabinoid additive that would increase potency, toxicity or addictive potential, or that would create an unsafe combination, with caffeine or other chemical that may increase carcinogenicity or cardiac effects.

RR 12.3. *Manufacturing and Processing Policies and Procedures*

- a. Cultivation Facilities and Dispensaries shall create and maintain written policies and procedures for the following:
 - i. Instructions for making each cannabinoid concentrate, extract, or product produced on the premises;
 - ii. Ingredients and amount of each ingredient used for each process lot;
 - iii. Process for making each product;
 - iv. Number of servings in a process lot;
 - v. Intended amount of THC per serving and in a unit of sale of the product; and
 - vi. Process for making each process lot homogenous.
- b. Processors of cannabinoid concentrates or extracts shall also include the following:
 - i. Procedures for conducting necessary safety checks prior to processing;
 - ii. Process for purging any solvent or other unwanted components from a cannabinoid concentrate or extract;

- iii. Sanitization procedures for working surfaces and equipment;
- iv. Procedures for handling or storage of any solvent, gas, or other chemical used in processing;
- v. Quality control procedures; and
- vi. Emergency procedures in case of a fire, chemical spill, or other emergency.

RR 12.4. ***Manufacturing and Processing of Cannabinoid Edibles.*** Cultivation facilities and dispensaries manufacturing and processing cannabinoid edibles shall comply with the following:

- a. The requirements of this section, the requirements of RR 8.5 and RR 9.6;
- b. Any state and local kitchen-related health and safety standards for retail food establishments;
- c. Before sale, food or drink that has been combined with usable marijuana shall not exceed ten milligrams (10 mg) of active tetrahydrocannabinol per portion and shall be physically demarked; and
- d. If the portions cannot be physically determined, the entirety of the food or drink that has been combined with usable marijuana shall not contain more than ten milligrams (10mg) of active tetrahydrocannabinol.

RR 12.5. ***Manufacturing and Processing of Cannabinoid Concentrates and Extracts.***

- a. Licensed facilities producing cannabinoid concentrates and extracts shall:
 - i. Not use solvent classified as “Class 1” by the Federal Drug Administration Guidance, Table 1, published in the Federal Register on December 24, 1997 (62 FR 67377);
 - ii. Only use a hydrocarbon-based solvent that is at least 99 percent purity;
 - iii. Only use a non-hydrocarbon-based solvent that is food-grade;
 - iv. Work in an environment with proper ventilation, controlling all sources of ignition where a flammable atmosphere is or may be present; and

- v. Use only potable water and ice made from potable water in processing.
- b. Licensed facilities producing cannabinoid extracts shall:
 - i. Not use pressurized canned flammable fuel, including but not limited to butane and other fuels intended for use in camp stoves, handheld torch devices, refillable cigarette lighters and similar consumer products;
 - ii. Process only in a fully enclosed room clearly designated on the floor plan of the licensed facility;
 - iii. Ensure that all processing rooms and equipment, including all electrical installations, comply with applicable electrical codes and fire codes;
 - iv. Use a professional grade closed loop extraction system designed to recover the solvents and built to recognized codes and generally accepted engineering standards, such as those of:
 - 1. American National Standards Institute (ANSI);
 - 2. Underwriters Laboratories (UL); or
 - 3. The American Society for Testing and Materials (ASTM).
 - v. If using carbon dioxide in processing, use a professional grade closed loop carbon dioxide gas extraction system where every vessel is rated to a minimum of six hundred pounds per square inch;
 - vi. Have equipment and facilities used in processing approved for use by the local fire code official;
 - vii. Have a licensed engineer certify that the closed-loop system was commercially manufactured, and is safe for its intended purposes;
 - viii. Have an emergency eye-wash station in any room in which cannabinoid extract is being processed; and
 - ix. Have all applicable material safety data sheets readily available in processing areas.
- c. Licensed facilities producing cannabinoid concentrates may:
 - i. Use a mechanical extraction process;

- ii. Use a chemical extraction process using a nonhydrocarbon-based or other solvent, such as water, vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol or ethanol; and
- iii. Use a chemical extraction process using the hydrocarbon-based solvent carbon dioxide, provided that the process does not involve the use of pressure or heat over 180 degrees.
- d. Licensed facilities producing cannabinoid concentrates shall:
 - i. Not use denatured alcohol;
 - ii. Not apply pressure or heat over 180 degrees if using carbon dioxide; and
 - iii. Only use or store dry ice in a well-ventilated room to prevent against the accumulation of dangerous levels of carbon dioxide.

SECTION 13. PACKAGING OF MEDICAL MARIJUANA

RR 13.1. *Medical Marijuana Packaging.* Cultivation facilities and dispensaries shall:

- a. Package usable medical marijuana that is intended for transport to another licensed facility, and not intended for sale to qualified patients and designated caregivers without repackaging in a shipping container affixed with a UIN generated by the Inventory Tracking System.
- b. Package usable medical marijuana that is intended for sale to a qualified patient or designated caregiver without re-packaging in a medical marijuana container.
 - i. All medical marijuana containers shall:
 - 1. Be sealed, traceable, and food compliant.
 - 2. Be child-proof:
 - a. So that it cannot be opened by a child; or
 - b. So that it prevents ready access to toxic or harmful amounts of the packaged product; and
 - c. So that it meets the testing requirements in accordance with the method described in 16 C.F.R. § 1700.20, as existing on January 1, 2017.

- ii. Medical marijuana packages shall not be shaped or designed in a manner that is likely to appeal to minors, including but not limited to:
 - 1. Packaging that is modeled after non-cannabis products primarily consumed by and marketed to children;
 - 2. Packaging that is in the shape of or that depicts an animal, vehicle, person, or character; and
 - 3. Packaging that closely resembles that of familiar food and drink items, including candy.
- iii. All medical marijuana containers shall be labeled according to the standards established by the Arkansas Department of Health.

SECTION 14. DISTRIBUTION OF MEDICAL MARIJUANA

RR 14.1. *Dispensaries*

- a. A dispensary may:
 - i. Accept marijuana seedlings, plants, or usable marijuana from:
 - 1. Cultivation facilities; and
 - 2. Other dispensaries in Arkansas;
 - ii. Accept marijuana seeds from any individual lawfully entitled to possess marijuana seeds, seedlings, and plants under the laws of the state in which the individual resides;
 - iii. Transfer or sell marijuana seedlings, plants, or usable marijuana to:
 - 1. Cultivation facilities;
 - 2. Other dispensaries in Arkansas; and
 - iv. Sell usable marijuana to qualified patients and designated caregivers within the parameters set forth by the Medical Marijuana Commission, Arkansas Department of Health, and Arkansas Alcoholic Beverage Control.

RR 14.2. *Cultivation Facilities*

- a. A cultivation facility may sell marijuana plants, seeds, and usable marijuana only to a dispensary or other cultivation facility.

SECTION 15. DISPENSING OF MEDICAL MARIJUANA AND RELATED SUPPLIES

RR 15.1. *Dispensing Medical Marijuana*

- a. Prior to dispensing medical marijuana to a qualified patient or designated caregiver, a dispensary agent shall:
 - i. Verify the identity of the qualifying patient or the designated caregiver;
 - ii. Verify the validity of the qualifying patient or designated caregiver's registry identification card;
 - iii. Enter the qualifying patient or designated caregiver's registry identification number listed on the registry identification card into the Inventory Tracking System;
 - iv. Verify that the qualified patient or designated caregiver has a current authorization by the Arkansas Department of Health to purchase medical marijuana;
 - v. Verify that the amount of medical marijuana the qualifying patient or designated caregiver is requesting would not cause the qualifying patient to exceed the limit on obtaining no more than two and one-half (2 ½ oz.) ounces of usable medical marijuana during any fourteen-day period;
 - vi. Enter the following information into the Inventory Tracking System:
 1. The dispensary agent's registry identification number;
 2. The dispensing organization's registry identification number;
 3. The amount, type and strain of medical marijuana dispensed;
 4. Any UIN associated with the medical marijuana;
 5. Purchase price of the medical marijuana;
 6. Identity of the individual to whom the medical marijuana was dispensed, whether the qualifying patient or the qualifying patient's designated caregiver; and
 7. The date and time the medical marijuana was dispensed.
 8. If an order is placed for delivery, the following information shall also be recorded:

- a. Registry identification numbers for the agents assigned to deliver the medical marijuana;
 - b. Address for delivery;
 - c. Estimated time of delivery; and
 - d. Actual time of delivery.
- b. Dispensaries may sell medical marijuana to a visiting qualifying patient if the patient produces evidence of his or her registry identification card or its equivalent that is issued under the laws of another state, district, or territory, commonwealth, or insular possession of the United States.
 - i. The dispensary shall retain a copy of the registry identification card or its equivalent and his or her proper identification in a manner described by the Arkansas Department of Health.
 - ii. The dispensary shall require the visiting patient to certify, in a form required by the Department, that they have been diagnosed by a physician to have one or more qualifying medical conditions.
 - iii. For each sale to a visiting qualifying patient, the following information shall be entered into the Inventory Tracking System:
 - 1. The dispensary agent's registry identification number;
 - 2. The dispensing organization's registry identification number;
 - 3. The amount, type and strain of medical marijuana dispensed;
 - 4. Any UIN associated with the medical marijuana;
 - 5. Identity of the individual to whom the medical marijuana was dispensed; and
 - 6. The date and time the medical marijuana was dispensed.
- c. A dispensary shall not use a self-service machine such as a vending machine for the purchase and dispensing of medical marijuana.
- d. Use or consumption of medical marijuana on the premises of the dispensary is prohibited.

RR 15.2. *Marijuana Paraphernalia, Supplies, and Educational Materials*

- a. A dispensary shall:
 - i. Make marijuana vaporizers available for sale to qualifying patients and designated caregivers;

- ii. Provided educational materials about medical marijuana methods of ingestion to qualifying patients and designated caregivers, including without limitation:
 - 1. Warnings on the potential health risks of smoking or combusting marijuana; and
 - 2. Information on potential health benefits of vaporizing marijuana compared to smoking or combusting.
- b. A dispensary may acquire, possess, manufacture, process, prepare, deliver, transfer, transport, supply and dispense marijuana paraphernalia, marijuana-related supplies, and educational materials to qualifying patients and designated caregivers; however, a dispensary shall not supply, possess, manufacture, deliver, transfer or sell marijuana paraphernalia that requires the combustion of marijuana to be properly utilized, including the following:
 - i. Pipes;
 - ii. Water Pipes;
 - iii. Bongs;
 - iv. Chillums;
 - v. Rolling Papers; and
 - vi. Roach Clips.

RR 15.3. *Recall Policy*

- a. All dispensaries shall establish a policy for communicating a recall for any usable marijuana that has been shown to present a reasonable probability that use of or exposure to the product will cause serious adverse health consequences. The policy shall include:
 - i. Procedure for contacting all qualifying patients, visiting qualifying patients, or designated caregivers who have, or likely have, obtained the product from the dispensary.
 - ii. Information and procedures for returning the product to the dispensary.
 - iii. Procedure for contacting the originating cultivation facility or dispensary;
 - iv. Procedure for notifying and communicating with the Alcoholic Beverage Control Division and the Arkansas Department of Health within 24 hours of the discovery of hazardous product.

- b. A dispensary shall be responsible for disposing of any recalled marijuana in the manner described in these rules.

SECTION 16. TRANSPORTATION AND DELIVERY OF MEDICAL MARIJUANA

RR 16.1. *Authorized Transportation for Cultivation Facility.* A cultivation facility shall only transport or deliver medical marijuana to another licensed cultivation facility, a licensed dispensary, or an approved laboratory.

RR 16.2. *Authorized Transportation for Dispensary.* A dispensary shall only transport medical marijuana to a licensed cultivation facility, licensed dispensary, or licensed approved laboratory.

RR 16.3. *Inventory Manifest Required*

- a. Prior to the transport of any medical marijuana, a printed inventory manifest shall be generated from the Inventory Tracking System. The manifest shall include the following information:
 - i. The following information for the cultivation facility or dispensary originating the transport:
 - 1. License Number; and
 - 2. Name and contact information for licensee.
 - ii. The following information for the cultivation facility, dispensary, or approved laboratory receiving the medical marijuana:
 - 1. License Number if the destination is a licensed facility or business name if the destination is an approved laboratory;
 - 2. Address of the destination;
 - 3. Name and contact information of the licensee, or contact information for the approved laboratory.
 - iii. Quantities by weight or unit of each type of medical marijuana or medical marijuana product contained in transport, along with the UINs for every item;
 - iv. The date of transport and approximate time of departure;
 - v. Arrival date and estimated time of arrival;
 - vi. Identity of the agents accompanying the transport;
 - vii. Delivery vehicle make and model and license plate number.
- b. A separate manifest shall be prepared for each licensed facility or approved laboratory;

- c. The originating facility shall provide the receiving facility with a copy of the inventory manifest;
- d. An inventory manifest shall not be altered after departing the originating premises;
- e. Receiving cultivation facilities and dispensaries shall enter the quantities of each marijuana item received, along with the UINs for every item, into the Inventory Tracking System.
- f. A cultivation facility, dispensary, or approved laboratory shall refuse to accept any medical marijuana or medical marijuana product that is not accompanied by an inventory manifest.
- g. Originating and receiving cultivation facilities and dispensaries shall maintain copies of inventory manifests for three (3) years

RR 16.4. ***Shipping Container Required.*** All medical marijuana packaged for transport shall be placed inside a shipping container. Each shipping container shall be tagged with a UIN.

RR 16.5. ***Secured Container Required***

- a. All medical marijuana in transport shall be shielded from public view and secured in the following manner:
 - i. In a locked, safe and secure storage compartment that is part of the motor vehicle transporting the medical marijuana; or
 - ii. In a locked storage container that has a separate key or combination pad.

RR 16.6. ***Vehicle and Personnel Requirements***

- a. Vehicles used in the transport of medical marijuana shall be:
 - i. Insured at or above the legal requirements in Arkansas;
 - ii. Capable of securing medical marijuana during transport;
 - iii. Equipped with an alarm system; and
 - iv. Free of any markings that would indicate the vehicle is being used to transport medical marijuana.
- b. Individuals transporting medical marijuana shall:
 - i. Have a valid cultivation facility agent or dispensary agent registry identification card issued by the Division;
 - ii. Have a valid Arkansas Driver's License; and
 - iii. Have possession of both the registry identification card and driver's license while operating the motor vehicle used to transport medical marijuana.

- c. All transport vehicles shall be staffed with a minimum of two (2) employees when a vehicle contains medical marijuana. At least one (1) employee shall remain with the vehicle at any time that it contains medical marijuana.

RR 16.7. *Routes and Additional Security Requirements for Transporting Medical Marijuana*

- a. Any vehicle transporting medical marijuana shall travel directly from the originating licensed facility to the receiving licensed facility or approved laboratory and shall not make any unnecessary stops in between, except to other licensed facilities or approved laboratories receiving inventory.
- b. If a vehicle transporting medical marijuana is involved in any accident or experiences any type of failure causing the vehicle to be stopped any location, other than a licensed facility or approved laboratory, for more than two (2) hours, the originating licensee shall notify the Division immediately.

RR 16.8. *Requirements for Delivery to Qualified Patients and Designated Caregivers.*

- a. A dispensary may deliver usable marijuana to a qualified patient or designated caregiver pursuant to the following:
 - i. All requirements for dispensaries set forth in RR 15.1.a. shall be completed prior to delivery;
 - ii. Deliveries may only occur on the date an order is received and processed pursuant to RR 15.1;
 - iii. Deliveries may only occur between the hours of 9:00 a.m. and 7:00 p.m.;
 - iv. A delivery manifest shall accompany each delivery or series of deliveries, and agents shall not deviate from the delivery route or make unnecessary stops;
 - v. All deliveries shall be accompanied by a delivery ticket listing the name of the qualified patient or designated caregiver and describing the products ordered;
 - vi. At the time of delivery, the dispensary agent shall check the registry identification card of the qualified patient or designated caregiver to verify the person accepting delivery is the same person who placed the order. The qualified patient or designated

caregiver who placed the order shall sign the delivery ticket to confirm receipt of the product; and

- vii. Medical marijuana may only be delivered to a residence in Arkansas. "Residence" means a dwelling, such as a house or apartment. It does not include a dormitory, hotel, motel, bed and breakfast, or other commercial business.

b. Delivery vehicle and personnel requirements

i. Vehicles used for the delivery of medical marijuana shall be:

1. Insured at or above the legal requirements in Arkansas;
2. Capable of securing medical marijuana during transport;
3. Equipped with an alarm system; and
4. Free of any markings that would indicate the vehicle is being used to deliver medical marijuana.

ii. Individuals delivering medical marijuana shall:

1. Have a valid dispensary agent registry identification card issued by the Division;
2. Have a valid Arkansas Driver's License; and
3. Have possession of both the registry identification card and driver's license while operating the motor vehicle used to deliver medical marijuana.

iii. All delivery vehicles shall be staffed with a minimum of two (2) employees when a vehicle contains medical marijuana. At least one (1) employee shall remain with the vehicle at any time that it contains medical marijuana.

c. Secure Container Required.

i. All medical marijuana in transport shall be shielded from public view and secured in the following manner:

1. In a locked, safe and secure storage compartment that is part of the motor vehicle transporting the medical marijuana; or
2. In a locked storage container that has a separate key or combination pad.

d. Emergency Notification Required.

- i. If a vehicle delivering medical marijuana is involved in any accident or experiences any type of failure rendering the vehicle

immobile or requiring the use of a tow truck, the dispensary agent shall notify the Division immediately.

SECTION 17. MARKETING AND ADVERTISING

RR 17.1. Advertising and Marketing Medical Marijuana

- a. Cultivation Facility Advertising and Marketing.
 - i. Cultivation facilities shall not advertise through any public medium or means designed to market its products to the public.
 - ii. Cultivation facilities may market their products directly to dispensaries by any means directed solely to the dispensaries and not available to the public.
- b. Dispensary Advertising and Marketing.
 - i. Advertising for medical marijuana by dispensaries shall not:
 - 1. Contain statements that are deceptive, false, or misleading;
 - 2. Contain any content that can reasonably be considered to target children, including, but not limited to:
 - a. Cartoon characters;
 - b. Toys; or
 - c. Similar images and items typically marketed towards children.
 - 3. Encourage the transportation of medical marijuana across state lines;
 - 4. Display consumption of marijuana;
 - 5. Contain material that encourages or promotes marijuana for use as an intoxicant; or
 - 6. Contain material that encourages excessive or rapid use or consumption.
 - ii. Advertising and marketing for medical marijuana shall include the following statements:
 - 1. "Marijuana is for use by qualified patients only. Keep out of reach of children.";
 - 2. "Marijuana use during pregnancy or breastfeeding poses potential harms.";
 - 3. "Marijuana is not approved by the FDA to treat, cure, or prevent any disease."; and

4. "Do not operate a vehicle or machinery under the influence of marijuana."
- iii. Dispensaries shall not make any deceptive, false, or misleading assertions or statement on any information material, any sign, or any document provided to a consumer.
- iv. Advertising Location Restrictions.
 1. A dispensary shall not place or maintain, or cause to be placed or maintained, any advertisement or marketing material for medical marijuana in the following locations:
 - a. Within 1,000 feet of the perimeter of a public or private school or daycare center.
 - b. On or in a public transit vehicle or public transit shelter; or
 - c. On or in a publicly-owned or operated property.
- v. Advertising Audience Restrictions
 1. A dispensary shall not utilize television, radio, print media, or the internet to advertise and market medical marijuana, unless the licensee has reliable evidence that no more than 30 percent of the audience for the program, publication, or website in or on which the advertisement is to air or appear is reasonably expected to be under the age of 18.
 2. Upon request by the division, a licensee shall provide the evidence relied upon to make the determination that no more than 30 percent of the audience for the advertisement is expected to be under the age of 18.
- vi. Licensed facilities shall not offer any coupons, rebates, or promotions for medical marijuana purchases, unless offered as part of a compassionate care plan presented to the Medical Marijuana Commission as part of the facility's application for licensure.

RR 17.2. Building Signage Requirements

- a. Cultivation facilities and dispensaries may have no more than three (3) signs visible to the general public from the public right-of-way, that identify the cultivation facility or dispensary by its business name.
- b. Each sign shall not exceed thirty-six (36 sq. ft.) square feet.

- c. Signs shall be placed inside the licensed facility's window or attached to the outside of the building.
- d. Signage shall not display any of the following:
 - i. Any content that can reasonably be considered to target children, including, but not limited to:
 - 1. Cartoon characters;
 - 2. Toys; or
 - 3. Similar images and items typically marketed towards children.
 - ii. Any content or symbol commonly associated with the practice of medicine or the practice of pharmacy, including, but not limited to:
 - 1. A cross of any color;
 - 2. A caduceus; or
 - 3. Any other symbol that is commonly associated with the practice of medicine, the practice of pharmacy, or healthcare, in general.

SECTION 18. DISPOSAL OF MEDICAL MARIJUANA

RR 18.1. *Disposal of Marijuana by Cultivation Facilities and Dispensaries.* All medical marijuana waste shall be disposed of in accordance with this rule.

- a. All medical marijuana waste shall be stored in a secure, limited access area on the premises of the cultivation facility or dispensary.
- b. All medical marijuana shall be rendered unusable pursuant to the methods set forth in this rule prior to disposal.
- c. All steps taken to render the marijuana unusable shall be conducted under video surveillance by the licensed facility's video surveillance system.
- d. All medical marijuana waste set for disposal shall be properly weighed and recorded in the Inventory Tracking System.
- e. A cultivation facility or dispensary shall notify the Division at least three (3) business days prior to rendering the medical marijuana waste unusable and disposing of it. The notification shall include the weight of the marijuana to be rendered unusable.
- f. Medical marijuana shall be rendered unusable by grinding and incorporating the cannabis plant waste with other ground materials so the resulting mixture is at least 50% non-cannabis waste by volume.

The following acceptable materials may be combined with cannabis plant waste:

- i. Compostable Mixed Waste: Cannabis waste to be disposed of as compost, feedstock, or in another organic waste method may be mixed with the following types of waste materials:
 - 1. Food waste;
 - 2. Yard waste;
 - 3. Vegetable based grease oils;
 - 4. Agricultural Materials;
 - 5. Biodegradable products and paper;
 - 6. Clean wood;
 - 7. Fruits and vegetables; or
 - 8. Plant matter.
- ii. Noncompostable Mixed Waste: Cannabis waste to be disposed of in a landfill or another disposal method, such as incineration, may be mixed with the following types of waste materials:
 - 1. Paper waste;
 - 2. Cardboard waste;
 - 3. Plastic waste;
 - 4. Soil;
 - 5. Nonrecyclable plastic; or
 - 6. Broken glass.
- g. Medical Marijuana waste rendered unusable by the methods described in section (e), may be delivered to a permitted solid waste facility for final disposition. Permitted solid waste facilities may include:
 - i. Compostable Mixed Waste: Compost, anaerobic digester, or other facility approved by the Division.
 - ii. Noncompostable Mixed Waste: Landfill, incinerator, or other facility approved by the Division.

SECTION 19. PERSONNEL REQUIREMENTS FOR DISPENSARIES AND CULTIVATION FACILITIES.

RR 19.1. *Registry Identification Card Required*

- a. Any employee, supervisor, or agent employed by a cultivation facility must have a current Registry Identification Card issued by the Alcoholic Beverage Control Division.

- b. Any employee, supervisor, or agent of a dispensary and any volunteer of a dispensary must have a current Registry Identification Card issued by the Alcoholic Beverage Control Division.
- c. The requirements and restrictions for the issuance of a Registry Identification Card are set forth in Section 20 of these Rules.

RR 19.2. *Hiring Procedure*

- a. A cultivation facility or dispensary shall provide a prospective cultivation facility agent or dispensary agent with a completed Notice of Intent to Hire form for submission to the Division.
- b. The prospective agent may not perform any duties on behalf of the cultivation facility or dispensary until such time as their Registry Identification Card has been issued by the Division.

RR 19.3. *Separation of Employment*

- a. A cultivation facility or dispensary shall notify the Division when any agent ceases to be employed by the cultivation facility or dispensary.
- b. Notice of Separation of Employment shall be on a form provided by the Division, and it shall be submitted within seven (7) days of the last date of the agent's employment.

RR 19.4. *Personnel Records*

- a. A cultivation facility or dispensary shall keep a record of all individuals employed as cultivation facility or dispensary agents, including, but not limited to the following information:
 - 1. Name of Employee;
 - 2. Detailed Job Description;
 - 3. Records of any specialized training received or acquired by the employee;
 - 4. Date(s) of Employment;
 - 5. Record of days worked and time off; and
 - 6. Any disciplinary action taken against an employee and the cause therefore.
- b. A cultivation facility or dispensary shall maintain required records for at least three (3) years after an employee ceases to work at the facility.

RR 19.5. *Dispensary Pharmacist Consultant Required.*

- a. A dispensary shall appoint a pharmacist consultant who is a pharmacist licensed with the Arkansas State Board of Pharmacy.
- b. A pharmacist consultant shall:
 - i. Register as a dispensary agent under this amendment and follow all procedures;

- ii. Develop and provide training to other dispensary agents at least one (1) time every twelve (12) months from the initial date of the opening of the dispensary on the following subjects:
 - 1. Guidelines for providing information to qualifying patients related to risks, benefits, and side effects associated with medical marijuana;
 - 2. Recognizing signs and symptoms of substance abuse; and
 - 3. Guidelines for refusing to provide medical marijuana to an individual who appears to be impaired or abusing medical marijuana;
- iii. Assist in the development and implementation of review and improvement processes for patient education and support provided by the dispensary;
- iv. Provide oversight for the development and dissemination of:
 - 1. Education materials for qualifying patients and designated caregivers that include:
 - a. Information about possible side effects and contraindications of medical marijuana;
 - b. Guidelines for notifying the physician who provided the written certification for medical marijuana if side effects or contraindications occur;
 - c. A description of the potential effects of differing strengths of medical marijuana strains and products;
 - d. Information about potential drug-to-drug interactions, including interactions with alcohol, prescription drugs, nonprescription drugs, and supplements;
 - e. Techniques for the use of medical marijuana and marijuana paraphernalia; and
 - f. Information about different methods, forms, and routes of medical marijuana administration;
 - 2. Systems for documentation by a qualifying patient or designated caregiver of the symptoms of a qualifying patient that includes a logbook, rating scale for pain and symptoms, and guidelines for a patient's self-assessment; and

3. Policies and procedures for refusing to provide medical marijuana to an individual who appears to be impaired or abusing medical marijuana; and
4. Be accessible by the dispensary or dispensary agent through:
 - a. Telephonic means at all times during operating hours; and
 - b. Telephone or video conference for a patient consultant during operating hours.

SECTION 20. REGISTRATION AND CERTIFICATION OF CULTIVATION FACILITY AGENTS AND DISPENSARY AGENTS

RR 20.1. *Registration and Certification Required.*

- a. Any employee, supervisor, volunteer, or agent of a cultivation facility or dispensary, including a dispensary pharmacist consultant, shall register with the Alcoholic Beverage Control Division and obtain a registry identification card prior to the commencement of any activity within the scope of employment or service at a cultivation facility or dispensary.
- b. If an individual is employed by multiple licensed facilities, he or she shall obtain a separate registry identification card for each place of employment.

RR 20.2. *Application*

- a. The following items must be submitted to the Alcoholic Beverage Control Division to apply for a Cultivation Facility or Dispensary Agent Registry Card:
 - i. An application form from the Division to include the following information:
 1. Legal name of applicant;
 2. Date of birth;
 3. Address of applicant;
 4. Current employment information, including intended position in cultivation facility or dispensary; and
 5. Criminal history information.

- ii. A completed “Notice of Intent to Hire” form from the cultivation facility or dispensary specifying the intended job duties of the applicant.
- iii. A signed, notarized “Authority to Release Information” form provided by the Division.
- iv. An in-state criminal background check through the Arkansas State Police.
- v. The applicant shall also furnish finger prints to the Arkansas State Police for transmission to the United States Federal Bureau of Investigation for investigation of the applicant’s criminal history, if any.
- vi. The following signed forms to be provided by the Division:
 - 1. “Agency Privacy Requirements for Noncriminal Justice Applicants” form; and
 - 2. “Noncriminal Justice Applicant’s Privacy Rights” form.
- vii. An applicant shall not have to submit the information in sections iv., v., and vi.:
 - 1. If the applicant holds an existing registry identification card for another licensed facility; or
 - 2. If the applicant has completed the required background checks for the purpose of obtaining a registry identification card in the 2 years prior to the application, and the applicant has never had a registration card suspended or revoked.

RR 20.3. *Registry Identification Card*

- a. Any employee, supervisor, volunteer, or agent of a cultivation facility or dispensary, including a dispensary pharmacist consultant, shall maintain possession of their registry identification card during any activity within the scope of employment or service at a cultivation facility or dispensary. The card shall either be kept on the individual’s person or in an accessible location on the premises of the cultivation facility or dispensary.
- b. The registry identification card shall identify the following information:
 - i. Name of the cardholder;
 - ii. Date of birth;
 - iii. Name of cultivation facility or dispensary;

- iv. Date of issuance;
- v. Date of expiration;
- vi. Registry identification number assigned by the Division.

RR 20.4. *Fee*

- a. The total fee for a registry identification card issued by the Division shall be \$50.00.
- b. The total fee shall be collected as follows:
 - i. One half of the fee shall be remitted along with the application.
 - ii. One half of the fee shall be remitted upon notification by the Division that the application has been approved.

RR 20.5. *Issuance*

- a. The Division shall not issue a registry identification card until:
 - i. It has received the results of both criminal background checks required by RR 20.2; and
 - ii. It has received the fees required by RR 20.4.
- b. Registry identification cards shall be issued by the Division within ten (10) days of receipt of the entire fee as described in RR 20.4.

RR 20.6. *Replacement*

- a. The Division shall issue a replacement registry identification card to a dispensary or cultivation facility agent if the card has not expired.
- b. In order to receive a replacement registry identification card, a person must present the following to the Division:
 - i. A valid government-issued photo i.d.
 - ii. A completed "Request for Replacement Registry Identification Card" form to be provided by the Division.
 - iii. A replacement fee of \$25.00.

RR 20.7. *Expiration and Renewal*

- a. A registry identification card shall expire on June 30 of each calendar year and is renewable on or before June 30 of each calendar year for the fiscal year beginning July 1.
- b. A registry identification card shall expire upon notification to the Division by a dispensary or cultivation facility that the person is no longer employed by the dispensary or cultivation facility.
- c. Cardholders shall submit a renewal form to be provided by the Division and a fee of \$50.00 in order to renew their cards.

- d. Cards shall be renewed within ten (10) days of receipt of the items described in section c.
- e. Renewals received after the date of expiration shall be subject to a penalty of \$25.00, in addition to the renewal fee. If a card is not renewed within one (1) month of expiration, the card shall be considered expired.

RR 20.8. *Separation of Employment.* A dispensary or cultivation facility shall notify the Division of any separation of employment with a registered agent by filing a Notice of Separation of Employment with the Division any time a dispensary agent or cultivation agent ceases to be employed by the dispensary or cultivation facility. The Notice of Separation of Employment shall be filed within 7 days following an agent's last day of employment at the dispensary or cultivation facility.

RR 20.9. *Persons Disqualified*

- a. The Division shall not issue a registry identification card to the following individuals:
 - i. Any person under twenty one (21) years of age;
 - ii. Any person who has been convicted of an excluded felony offense;
 - iii. Any person who has had a registry identification card revoked by the Division within five (5) years of application; or
 - iv. Any person who has not paid the fees required by RR 20.4.
- b. The Division shall not issue a registry identification card to any person who fails to provide the information required in RR 20.2.

RR 20.10. *Suspension and Revocation*

- a. The Division may revoke the registry identification card of a dispensary or cultivation facility agent who knowingly violates any provision set forth in Section 21 of these Rules and Regulations.
- b. The Division may revoke or suspend the dispensary license or cultivation facility license of a dispensary or cultivation facility that the Division determines knowingly aided or facilitated a violation of any provision set forth in Section 21 of these Rules and Regulations.

**SECTION 21. PROHIBITED ACTIVITIES; GROUNDS FOR
SUSPENSION, REVOCATION, OR LEVY OF FINE AGAINST ANY
LICENSE OR REGISTRY IDENTIFICATION CARD.**

RR 21.1. *Grounds for Suspension or Revocation of a Registry Identification Card.* The Division may suspend or revoke the registry identification card of any cultivation facility agent or dispensary agent who knowingly violates any provision of the Amendment or the rules promulgated by the Commission, Department, or Division.

RR 21.2. *Grounds for Suspension, Revocation, or Placing of Monetary Fine against a Dispensary or Cultivation Facility License.* Any dispensary or cultivation license may be suspended, revoked, or assessed a monetary fine of up to five thousand (\$5000) dollars for any violation of the Arkansas Medical Marijuana Act by any licensee or any employee, agent or servant of the licensee, including the following violations:

- a. False material statements made by a licensee to the Arkansas Medical Marijuana Commission during the application process;
- b. Failure to pay taxes owed to the State of Arkansas or to any political subdivision of the State of Arkansas;
- c. Failure to prevent diversion or theft of medical marijuana;
- d. Allowing any employee, supervisor, volunteer, or agent who has not obtained or had suspended or revoked, a registry identification card from the Alcoholic Beverage Control Division to work on a licensed premises or perform any duty on behalf of the dispensary or cultivation facility;
- e. Failure to allow entry to the licensed premises to Alcoholic Beverage Control Enforcement agents or duly authorized police officers in the course and scope of their employment;
- f. Failure to maintain operational alarm systems and video surveillance systems;
- g. Failure to maintain or keep any record required by these rules or Arkansas law;
- h. Failure to comply with advertising and marketing restrictions;
- i. Failure to properly package or secure medical marijuana on the licensed premises or during transport;
- j. Failure to properly dispose of medical marijuana;

- k. Operating a cultivation facility or dispensary when a license has been suspended;
- l. Failure to comply with any rule or regulation promulgated by the Arkansas Department of Health regarding medical marijuana;
- m. Failure to comply with any rule or regulation promulgated by the Arkansas Medical Marijuana Commission;
- n. Failure to comply with any law of the State of Arkansas concerning medical marijuana;
- o. Failure to comply with an local regulation regarding medical marijuana;
- p. Failure to comply with any rule or regulation of the Alcoholic Beverage Control Division.
- q. Knowingly aiding or facilitating in a violation of the Amendment, rules promulgated by the Commission, Department, or Division, or any other law of the State of Arkansas.

RR 21.3. *Grounds for Suspension, Revocation, or Placing of Monetary Fine against a Cultivation Facility License.* Any cultivation license may be suspended, revoked, or assessed a monetary fine of up to five thousand (\$5000) dollars for any violation of the Arkansas Medical Marijuana Act by any licensee or any employee, agent or servant of the licensee, including the following violations:

- a. Possession of usable marijuana in excess of the amount reasonably necessary to meet the demand for and needs of qualifying patients as determined by the Arkansas Medical Marijuana Commission and the Arkansas Department of Health;
- b. Selling, delivering, or transporting marijuana in any form to any person or entity without a dispensary or cultivation facility license issued by the Arkansas Medical Marijuana Commission or an approved laboratory for testing purposes;
- c. Giving marijuana to any person or entity;
- d. Selling marijuana to any dispensary or cultivation facility that has a license under suspension, revocation, or that has not been renewed;
- e. Failure to properly label and package marijuana that is moved between the cultivation facility and a dispensary or other cultivation facility.
- f. Failure to utilize the Inventory Tracking System for reporting and inventory control.

RR 21.4. *Grounds for Suspension, Revocation, or Placing of Monetary Fine against a Dispensary License.* Any dispensary license may be suspended, revoked, or assessed a monetary fine of up to five thousand (\$5000) dollars for any violation of the Arkansas Medical Marijuana Act by any licensee or any employee, agent or servant of the licensee, including the following violations:

- a. Accepting marijuana seeds, seedlings, plants, or usable marijuana from an unauthorized source;
- b. Transferring, selling, or delivering marijuana seedlings, plants, or usable marijuana to any entity or person, except dispensaries and cultivation facilities licensed by the Arkansas Medical Marijuana Commission, qualifying patients, visiting qualifying patients, designated caregivers, and approved laboratories for testing purposes;
- c. Dispensing more than a total of two and one-half ounces (2 ½ oz.) of usable marijuana to either a qualifying patient or designated caregiver acting on behalf of a qualifying patient during a fourteen (14) day period. A dispensary shall not dispense more than a total of two and one-half ounces (2 ½ oz.) of usable marijuana to a visiting qualifying patient during a fourteen (14) day period;
- d. Failure to record and report required information for all transactions for the dispensing of usable marijuana;
- e. Giving samples of marijuana or marijuana products.
- f. Failure to utilize the Inventory Control Tracking System for reporting and inventory control.
- g. Use of a self-service machine such as a vending machine for the purchase and dispensing of medical marijuana.

SECTION 22. PROCEDURE FOR LEVYING MONETARY PENALTIES AGAINST LICENSES AND FOR THE SUSPENSION AND REVOCATION OF LICENSES AND REGISTRY IDENTIFICATION CARDS; NOTICE REQUIREMENTS; HEARING PROCEDURES; AND APPEALS.

RR 22.1. *Violation Reports and Notices.*

- a. The Director of Alcoholic Beverage Control Administration, the Director of Alcoholic Beverage Control Enforcement, an enforcement agent, an employee of the board, or assisting law enforcement officer, may issue an inspection report, an advisory report, or a notice of

- violation before taking action to fine, suspend, or revoke a dispensary license, cultivation facility license, or agent registry identification card.
- b. An inspection report documents an inspection of a licensed premises. An inspection report must be prepared on a form prescribed by the Alcoholic Beverage Control Board.
 - c. The Director of Alcoholic Beverage Control Administration may issue a notice of violation if an inspection report or other credible information shows a marijuana establishment or its agent is in violation of the Arkansas Medical Marijuana Amendment; any Rule promulgated by the Alcoholic Beverage Control Division, the Medical Marijuana Commission, or the Arkansas Department of Health; any Order of the Alcoholic Beverage Control Division, the Medical Marijuana Commission, or the Arkansas Department of Health; or any law relating to marijuana; or any law relating to taxation.
 - d. A notice of violation shall be delivered to the marijuana establishment at its licensed premises.
 - e. A notice of violation regarding cultivation facility agent or dispensary agent shall be delivered to the agent at his or her place of employment. A copy of the notice shall be provided to the licensee of the cultivation facility or dispensary.
 - f. The notice shall describe any violation, and cite the applicable Constitutional Amendment provision, statute, Rule, order of the board, or other law. A violation report or notice may be the basis of a proceeding to fine, suspend, revoke, or otherwise penalize a marijuana establishment's license. The notice shall include the Director's proposed fine, as well as, any proposed penalty to be imposed. A marijuana establishment, cultivation facility agent, or dispensary agent that receives a notice of violation shall respond to the notice in writing, and may, not later than 10 days after receiving the notice, either consent to the proposed penalty set forth in the notice and waive the right to a hearing, or request an opportunity to appear before the Director of Alcoholic Beverage Control Administration or an authorized hearing officer.
 - g. If the licensee or agent consents to the penalty and waives the right to a hearing, the licensee or agent shall fulfill the terms set forth in the notice of violation.

- h. If a hearing is requested, a hearing shall be scheduled and the licensee or agent shall receive a notice of hearing in compliance with these rules.
- i. If the licensee or agent fails to respond to the notice of violation, the Director shall enter an order in compliance with these rules.

RR 22.2. *All Hearings for Suspension, Revocation, or Money Fine of Licenses to be Before Director or Designated Hearing Officer Upon Notice of Hearing; Emergency Exception.*

- a. All hearings for the suspension, revocation, or money fine of licenses or registry identification cards of dispensary agents and cultivation facility agents shall initially be before the Alcoholic Beverage Control Director or a Hearing Officer designated as provided in these regulations pursuant to the notice required by these Regulations, with an opportunity for interested parties to respond and present evidence and argument on all issues involved.
- b. If the Director finds, pursuant to ACA § 25-15-211(c), that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in his Order, summary suspension of the license or registry identification card may be ordered pending proceedings for revocation or other action, which proceedings shall be promptly instituted and determined.
- c. If the Director makes the determination set out in (b), the provisions of RR 22.1 shall not apply.

RR 22.3. *Contents of Notice Required.*

- a. In every case in which a hearing is required by these Regulations or by any law of the State of Arkansas pursuant to notice, such notice shall include the following:
 - i. A statement of the time, place and nature of the hearing;
 - ii. A statement of the legal authority and jurisdiction under which the hearing is to be held;
 - iii. A short and plain statement of the matters of fact and law asserted; and
 - iv. A statement advising the licensee or agent that the license or registry identification card may be suspended or revoked.

RR 22.4. *Conduct of Hearing by Director or Hearing Officer.* In the conduct of any hearing held by the Director or the Hearing Officer designated as provided in these Regulations, the Director or such Hearing Officer shall be authorized

to examine or cause to be examined under oath any person, and to examine or cause to be examined books and records of any licensee or agent; to hear testimony, to take proof material for his information and for the purposes of the hearing; to administer or cause to be administered oaths; and for such purposes to issue subpoenas to require the appearance of witnesses and the production of books and records, which subpoenas shall be effective in any part of this state. Any Circuit Court may by order duly entered require the attendance of witnesses or the production of relevant books and records subpoenaed by the Director and the Court may compel obedience to its orders by proceedings for contempt. Any licensee or agent involved in a hearing before the Director shall be entitled, on request, to a subpoena for the compulsory attendance of witnesses desired by him.

RR 22.5. *Order Denying, Suspending, Revoking or Imposing a Money Fine Against Licensee or Agent.* Whenever the Director shall deny, suspend, revoke any license or application, or impose a money fine against any licensee or agent, he shall prepare an Order so providing, which shall be signed by the Director or some person designated by him or her. Said Order shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Said Order shall be mailed by certified mail by the Director to the licensee or agent to the address provided by the licensee or the agent. Said Order shall be final and binding on all parties until such Order has been appealed as provided in these Regulations and a decision rendered by the Alcoholic Beverage Control Board.

RR 22.6. *Appeal by Person Aggrieved by Order of Director.* Any licensee or agent aggrieved by an Order of denial, suspension, revocation, or the imposition of a money fine by the Director may appeal from such Order to the Alcoholic Beverage Control Board by filing a notice of appeal with the Board. The notice of appeal must be mailed or delivered to the offices of the Alcoholic Beverage Control Division within fifteen (15) days after the Order to be appealed from was received by the recipient, as shown by the Certified Mail Return Receipt card returned to the Alcoholic Beverage Control Division. The notice of appeal shall designate the name of the licensee or agent. At least ten (10) days before the time set for the hearing the Alcoholic Beverage Control Division shall notify the licensee or agent of the time and

place where said appeal shall be heard by the Board or by a Hearing Officer designated as provided in these regulations. Such notice to the licensee or agent shall be mailed by regular first class mail. Said hearing shall be held within at least sixty (60) days after the date of the filing of the notice of appeal unless the person appealing shall consent to a later hearing.

RR 22.7. *Conduct of Hearing by Board.* For the purpose of hearing or conducting any appeal authorized to be heard by it, the Board or any Hearing Officer designated as provided in this Regulations, shall have the power to examine or cause to be examined under oath any licensee or agent, or any other person, and to examine or cause to be examined the books and records of any such licensee or agent; to hear testimony and to take proof material for its information or the information of such Hearing Officer in hearing such appeal; to administer or cause to be administered oaths; and for such purposes to issue subpoenas requiring the attendance of witnesses and the production of books and records, such subpoenas to be effective in any part of this State; and any Circuit Court may by order duly entered require the attendance of witnesses and the production of relevant books and records subpoenaed by the Board and the Court may compel obedience to its orders by proceedings for contempt. A licensee or agent involved in a hearing before the Board shall be entitled, on request, to a subpoena for the compulsory attendance of witnesses desired by him.

RR 22.8. *Order by Board.* Within five (5) days after a hearing is concluded by the Board, the Board shall render its written decision or Order. Such written Order shall include findings of facts and conclusions of law, separately stated. Findings of fact, if set forth in statutory language shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. A copy of such Order shall be mailed by the Board by certified mail to the licensee or agent. Said Order shall be final and binding on the licensee or agent. Provided, however, that an appeal may be taken from any Order against a licensee or agent as provided for in these Regulations.

RR 22.9. *Appeal from Board to Courts.* Any licensee or agent aggrieved by an Order of the Board may appeal to the Circuit Court system in accordance with the Arkansas Administrative Procedure Act. An appeal from the judgment of the Circuit Court may be taken to the Arkansas Court of Appeals or the Supreme Court of Arkansas in the manner provided for the appeal of civil matters from the Circuit Court.

RR 22.10. *Appellant to Pay Costs of Preparing Transcript of Board Hearings.*

Pursuant to the provisions of the Arkansas Administrative Procedure Act, the Alcoholic Beverage Control Division shall prepare the certified copy of the agency record for filing in any appeal filed under the Arkansas Administrative Procedure Act. However, the Alcoholic Beverage Control Division will recover \$1.50 per page for each page of the transcript of the Alcoholic Beverage Control proceedings filed with the Circuit Court, if the Alcoholic Beverage Control Division is determined to be the prevailing party in the Administrative Procedure Act review. In the event any parties request that the Alcoholic Beverage Control Division provide a copy of the agency record, the Alcoholic Beverage Control Division shall be entitled to recover forty cents (\$.40) per page for each copy of the transcript. Any copies of Alcoholic Beverage Control files, records, or transcripts shall be paid for at the rates noted above. All monies received by the Alcoholic Beverage Control Division pursuant to the above provisions shall be deposited to the General Revenues of the State of Arkansas.

RR 22.11. *Admissibility of Evidence in Hearings.* In any hearing provided for by these Regulations or by any law of the State of Arkansas, the Director, the Board and any Hearing Officer designated pursuant to these Regulations to conduct such hearing, shall not be bound by the legal rules of evidence in conducting any hearing and in making any decision, and may take into consideration any testimony, papers or documents which may be deemed relevant to the issues involved.

RR 22.12. *Designation of Hearing Officer.* Pursuant to the power granted to the Alcoholic Beverage Control Division, in part by ACA § 25-15-213 and pursuant to other powers granted to the Director and the Board, the Director or the Board may designate any member of the Alcoholic Beverage Control Division to conduct any hearing authorized by this Article or by any Medical Marijuana law of the State of Arkansas.

RR 22.13. *Right to Counsel and to Cross-Examine Witnesses for Any Person Compelled to Appear at Hearing.* Any person compelled to appear at any hearing provided by these Regulations or by any Arkansas Medical Marijuana law of the State of Arkansas shall have the right to be accompanied and advised by counsel and to cross-examine witnesses.

RR 22.14. *Suspended or Revoked License or Registry Identification Card to be Surrendered.* After a license or registry identification card has been suspended

or revoked by Order of the ABC Director, the ABC Board, or any Court Order which has become final, notice thereof shall be given by the ABC Director to any authorized agent of the Alcoholic Beverage Control Enforcement Division and said agent shall immediately take possession of the license or registry identification card and return it to the Director.

Exhibit E

Arkansas Medical Marijuana Commission

25 July 2018

On the 12th day of July 2018, the Arkansas Medical Marijuana Commission (AMMC) convened at Little Rock, Arkansas. In attendance were the Arkansas Medical Marijuana Commissioners: Dr. Ronda Henry-Tillman, Chairperson, Dr. Stephen J. Carroll, Travis W. Story, Esq., James Miller, and Dr. J. Carolos Roman.

Commissioner Tillman called the meeting to order.

**Commissioner Story made a motion to accept the minutes from the 2 July 2018 meeting.
Commissioner Carroll seconded the motion.
The motion carried 5-0.**

Commissioners requested in the previous meeting to receive information on the possibility of additional or independent staff.

Director Mary Robin Casteel presented testimony to the Commission, explaining her recent discussion with the Office of Personnel Management, and relayed that while positions were created for the Medical Marijuana Commission, those positions are not currently funded. The positions could be funded by the legislature during the General Session. Director Casteel asked the Commission what specific additional or different help they felt they needed through additional staff. Chairwoman Tillman and Commissioner Story both explained they were unclear on which ABC employees were serving the Commission, or how to contact those employees. Director Casteel made formal introductions of the ABC staff members dedicated to MMC, and opined that she felt the Commission was more than adequately staffed by ABC employees.

The Commissioners invited members from the Office of State Procurement to explain the procurement process, and how it would pertain to the Commission's potential hiring of a third party scorer. David Withow and Mary Katherine Williams from the Office of State Procurement appeared to offer testimony, and explained the option for cooperative contracting, which essentially "piggy backs" on existing contracts other governmental agencies have with consulting contractors. The Commission discussed in depth the ability to customize the "scope of work," to be submitted with the request for bids. Some of those customizations included screening for conflicts of interest, a time limit of 30-60 days, and scorers with backgrounds in the medical, pharmacological, and agricultural industries. Commissioners asked ABC staff to prepare the scope of work for the Commission to review at its next meeting.

**Commissioner Carroll motioned for an emergency rule to authorize the Commission retain a consultant for scoring.
Commissioner Miller seconded the motion.**

Commissioner Story suggested the motion should be broadened to authorize the Commission to hire a consultant for any reason, not specifically limited to application scoring.

Commissioner Carroll amended his motion to an emergency rule to authorize the Commission to hire a consultant.

Commissioner Miller seconded the motion.

The motion carried 5-0.

Staff Attorney Danielle Hoefer confirmed to the Commission that cultivation licenses were awarded on 10 July 2018, pursuant to MMC Rules.

Staff Attorney Danielle Hoefer confirmed to the Commission that all letters of protest concerning cultivation license-holders had been turned over to ABC Enforcement for investigation, and, if warranted, adjudication by the ABC Board.

Commissioner Roman made a motion to amend the existing rules, by emergency rule, to hold cultivation and dispensary applications and scores in reserve, so that the MMC could rely on the existing applications and scores in the event additional licenses are issued.

Commissioner Miller seconded the motion.

The motion carried 4-1, with Commissioner Story voting “no.”

Commissioner Miller motioned to adopt language of a “double blind tie-breaker,” in the event two or more applications in line for licensure had identical scores.

Commissioner Carroll seconded the motion.

The motion carried, 5-0.

Commissioner Story made a motion for the Commission to resume scoring, in lieu of a third party scorer.

Commissioner Roman seconded the motion.

The motion failed, 2-3, with Commissioners Tillman, Carroll, and Miller voting “no.”

Finally, the Commission scheduled a follow-up meeting to continue with the aforementioned agenda items, as well as to address disqualified cultivation applications for Thursday, July 25, 2018, at 4:00pm (1600 HRS).

There being no further business, Dr. Tillman adjourned the meeting.

Exhibit F

Arkansas Medical Marijuana Commission

27 February 2018

On the 27th day of February 2017, the Arkansas Medical Marijuana Commission (AMMC) convened at Little Rock, Arkansas. In attendance were the Arkansas Medical Marijuana Commissioners: Dr. Ronda Henry-Tillman, Chairperson, Dr. Stephen J. Carroll, Travis W. Story, Esq., James Miller, and Dr. J. Carolos Roman.

Commissioner Tillman called the meeting to order.

Commissioners reviewed the meeting minutes from the December XX, 2017 meeting. Commissioner Roman made a motion to approve the minutes. Commissioner Story seconded the motion. By a vote of 5-0, the minutes were approved.

Joel DiPippa, Senior Counsel for the Department of Finance and Administration – Revenue Legal Counsel, provided the Commission with a review of the application process, scoring procedures, applicants not scored, and the process by which scores were compiled by the staff of the Alcoholic Beverage Control Administration. Mr. DiPippa went on to explain the next steps required by those who would soon be announced as selected for licensure, and their requirements to pay the licensing fee and post the performance bond.

Mr. DiPippa then proposed the Commission reconvene in approximately two (2) weeks to adopt the licensure of those selected applicants who had timely satisfied the requirements of the licensing fee and posting the performance bond.

Dr. Tillman raised a question regarding the scoring process and whether the diversity points had been applied to the scores. Mary Robin Casteel, Director for the Alcoholic Beverage Control Administration explained that two and one half (2.5) points were applied to each applicant score which satisfied the threshold for minority ownership.

Mr. DiPippa proposed a meeting date for the 14th day of March 2018, for which each Commissioner agreed he or she would be available.

Commissioners were provided with flash drives containing the first zone of dispensary applications, so that the Commissioners could begin scoring. No dates were set at this time for completion of dispensary scoring.

Ms. Casteel announced the six (6) highest scoring applications, as the applicants scored for third (3rd) place were submitted by the same group, and therefore ineligible to accept licenses for both proposed facilities. Ms. Casteel explained that the group with two selected applications would need to choose only one (1) facility with which to proceed. Mr. DiPippa announced the runner-up applicants, seven through ten (7-10).

Mr. DiPippa stated that applications one through ten (1-10) had been redacted under the Arkansas Freedom of Information Act, and would be available on the AMMC website by close of business on Wednesday, February 28, 2018.

Ms. Casteel followed that scoresheets, including both cumulative scores as well as each commissioner's scoresheets, would be available on the AMMC website as of 1630 hours that afternoon, Tuesday, February 27, 2018.

There being no further business, Dr. Tillman adjourned the meeting.

Exhibit G



ATTORNEY GENERAL
LESLIE RUTLEDGE
ARKANSASAG.GOV

Jennifer L. Merritt
Senior Assistant Attorney General

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June 5, 2020

R. Victor Harper, Esq.
R. VICTOR HARPER, P.A.
717 S. Lincoln
Star City, AR 71667

Via E-Mail

Matt Simmons, Esq.
THE LAW OFFICES OF MATT
SIMMONS, ESQ., CHD.
401 E. Jefferson St., Suite 201
Rockville, MD 20850

Via E-Mail

Re: *Carpenter Farms Medical Group v. DFA, et al.*
Pulaski County Circuit Court Case No. 60CV-18-8555

Dear Mr. Harper and Mr. Simmons:

In light of the Arkansas Supreme Court majority's opinion in the above-referenced case, which will become final on or about June 16, 2020, if the State foregoes a petition for rehearing, and in the interest of fully and finally resolving all outstanding issues between the parties, I write to gauge Carpenter Farms's interest in settling this case on the following terms, which we can mutually present to the Arkansas Medical Marijuana Commission ("MMC") for its approval at its June 16, 2020, meeting if agreeable:

1. MMC agrees to reinstate Carpenter Farms Medical Group's application and score for a medical marijuana cultivation facility license and put it back in the reserve pool of unselected applicants as the #6 applicant next in line for a license. MMC shall so reinstate Carpenter's application and score prior to any vote by the MMC to issue additional licenses. This will fully restore Carpenter to the position it would have been in had it not been disqualified for failure to meet minimum qualifications and allow it to lobby the MMC to issue it a license before

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the July 10, 2020, expiration date of the cultivation applications per MMC rules, including, but not limited to for purposes of MMC Cultivation Rule IV.9.h. MMC is already scheduled to hear from two cultivator applicants on June 8 who hope to persuade the MMC to issue the three additional licenses permitted under Amendment 98. I understand that all interested parties will not have an opportunity to speak at the June 8 meeting and, therefore, MMC will not be voting on the issue until June 16, and commits to adhere to that timeline.

2. Any additional licenses issued by the MMC will be based on and issued in the order of scores as they stand after Carpenter's reinstatement. If the MMC extends the July 10, 2020, expiration date for the reserve pool applications, then Carpenter shall be treated as all other reserve applicants and shall remain the 6th highest score and next in line for any additional cultivation licenses that may issue.

3. Carpenter shall be permitted to be heard by the MMC at the June 16, 2020, MMC meeting in pursuit of persuading the MMC to issue one or more of the remaining licenses. In addition to an oral presentation, in connection with that meeting, Carpenter shall be permitted also to submit testimony, witnesses, written evidence, including declarations, letters or other documentation bearing on the issue before the MMC, namely issuance of additional licenses. MMC shall consider and include such written submissions in connection with Carpenter's request, provided they are submitted no later than Friday June 12, 2020. Carpenter Farms understands and agrees that its presentation and the MMC's decision do not constitute an adjudication under Ark. Code Ann. § 26-15-212.

4. The MMC shall consider and vote on whether to grant additional licenses at the June 16, 2020, meeting, or any adjournment or rescheduling thereof, but in no event shall it fail to do so on or before July 9, 2020. If it fails to do so, this agreement shall become null and void.

5. The parties understand and acknowledge that the Attorney General's office, and any counsel employed by the State advising the Commission at or in connection with any vote contemplated hereby, have a duty to advise the Commission on the requirements of the law with regard to the issuance of licenses, but these attorneys shall remain neutral regarding the Commission's decision with regard to whether or not to award additional licenses. The Commission will decide whether to award additional licenses pursuant to its Rules and based on the evidence presented by the requesting reserve-pool applicants.

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June 5, 2020

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6. MMC is already in the process of revising and readopting its rules and will state the reasons, if any, why it is impracticable to adopt the Attorney General's model rules.

7. Defendants understand and acknowledge that Carpenter Farms may file a claim for recoupment of the reasonable attorneys' fees and costs expended in this matter before the Arkansas State Claims Commission, up to and including the negotiation of this settlement agreement and winding down the state-court lawsuit but not including any post-settlement lobbying efforts before the MMC. Defendants agree not to contest that claim *provided that* the amount claimed is supported by notarized affidavits of the billing attorneys as well as itemized billing records showing the date, time spent, a description of the task(s) performed, and documentation supporting the amount of all expenses claimed.

8. In consideration of the foregoing, Carpenter Farms will withdraw its request for an expedited discovery schedule on June 9, 2020. Upon MMC's reinstatement of Carpenter's score and rank on June 16, 2020, provided that the Commission votes on whether to issue additional licenses on that date, or on such later date up to and including July 9, 2020, when the Commission so votes, Carpenter will file a motion to voluntarily nonsuit its complaint in the referenced matter with prejudice, submit a proposed order of dismissal with prejudice to the Court forthwith, and agree not to disparage the Defendants or any of their staff. The parties shall keep this agreement confidential until after they present these terms to the Board at the June 16, 2020, meeting. The parties understand and agree that the Court will retain continuing jurisdiction to enforce the terms of this agreement.

9. The parties intend that this agreement fully and finally resolve any and all claims that Carpenter may have based on the events set forth in its complaint *except* Carpenter's claim for attorneys' fees and costs referenced in paragraph 7 above.

If the terms of this offer are acceptable to Carpenter Farms, please so indicate below. This offer expires at 6:00 p.m. on June 5, 2020.

Kind regards,

Jennifer L. Merritt

Jennifer L. Merritt
Senior Assistant Attorney General

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JLM/th

Accepted this 5th day of June, 2020. I hereby certify that I am authorized
to bind Carpenter Farms Medical Group, LLC with regard to this matter.

By: Matthew A. Simonoff
Title: Counsel of Record, Pto H & Vice